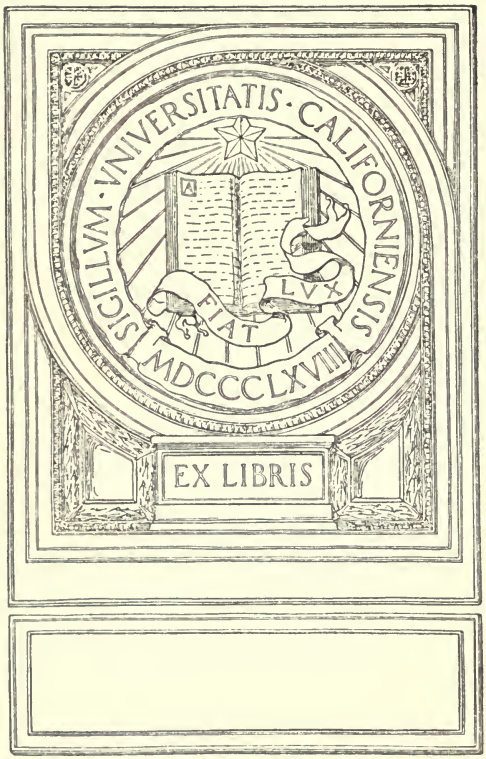
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# CHAPTERS OF ERIE,

## AND OTHER ESSAYS.

BY

CHARLES F. ADAMS, JR., AND HENRY ADAMS.

BOSTON:
JAMES R. OSGOOD AND COMPANY,
LATE TICKNOR & FIELDS, AND FIELDS, OSGOOD, & CO.
1871.

HE2791
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University Press: Welch, Bigelow, & Co.,
Cambridge.

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# A CHAPTER OF ERIE.*

NOT a generation has passed away during the last six hundred years without cherishing a more or less earnest conviction that, through its efforts, something of the animal had been eliminated from the higher type of man. Probably, also, no generation has been wholly mistaken in nourishing this faith; — even the worst has in some way left the race of men on earth better in something than it found them. And yet it would not be difficult for another Rousseau to frame a very ingenious and plausible argument in support of the opposite view. Scratch a Russian, said the first Napoleon, and you will find a Cossack; call things by their right names, and it would be no difficult task to make the cunning civilization of the nineteenth century appear but as a hypocritical mask spread over the more honest brutality of the twelfth. Take, for instance, some of the cardinal vices and abuses of the imperfect past. Pirates are commonly supposed to have been battered and hung out of existence when the Barbary Powers and the Buccaneers of the Spanish Main had been finally dealt with. Yet freebooters are not extinct; they have only transferred their operations to the land, and conducted them in more or less accordance with the forms of law; until, at last, so great a proficiency have they attained, that the commerce of the world is more equally but far more heavily taxed in their behalf, than would ever have entered into their wildest hopes while, outside the law, they simply made all comers stand and deliver. Now, too, they no

* From the North American Review for July, 1869.

longer live in terror of the rope, skulking in the hiding-place of thieves, but flaunt themselves in the resorts of trade and fashion, and, disdaining such titles as once satisfied Ancient Pistol or Captain Macheath, they are even recognized as President This or Colonel That. A certain description of gambling, also, has ceased to be fashionable; it is years since Crockford's doors were closed, so that in this respect a victory is claimed for advancing civilization. Yet this claim would seem to be unfounded. Gambling is a business now where formerly it was a disreputable excitement. Cheating at cards was always disgraceful; transactions of a similar character under the euphemistic names of "operating," "cornering," and the like are not so regarded. Again, legislative bribery and corruption were, within recent memory, looked upon as antiquated misdemeanors, almost peculiar to the unenlightened period of Walpole and Fox, and their revival in the face of modern public opinion was thought to be impossible. In this regard at least a sad delusion was certainly entertained. Governments and ministries no longer buy the raw material of legislation; — at least not openly or with cash in hand. The same cannot be said of individuals and corporations; for they have of late not infrequently found the supply of legislators in the market even in excess of the demand. Judicial venality and ruffianism on the bench were not long since traditions of a remote past. Bacon was impeached, and Jeffries achieved an immortal infamy for offences against good morals and common decency which a self-satisfied civilization believed incompatible with modern development. Recent revelations have cast more than doubt upon the correctness even of this assumption.*

No better illustration of the fantastic disguises which the worst and most familiar evils of history assume as they meet

* See a very striking article entitled "The New York City Judiciary" in the North American Review for July, 1867. This paper, which, from its fearless denunciation of a class of judicial delinquencies which have since greatly increased both in frequency and in magnitude, attracted great attention when it was published, has been attributed to the pen of Mr. Thomas G. Shearman, of the New York bar.

us in the actual movements of our own day could be afforded than was seen in the events attending what are known as the Erie wars of the year 1868. Beginning in February and lasting until December, raging fiercely in the late winter and spring, and dying away into a hollow truce at midsummer, only to revive into new and more vigorous life in the autumn, this strange conflict convulsed the money market, occupied the courts, agitated legislatures, and perplexed the country, throughout the entire year. These, too, were but its more direct and immediate manifestations. The remote political complications and financial disturbances occasioned by it would afford a curious illustration of the close intertwining of interests which now extends throughout the civilized world. The complete history of these proceedings cannot be written, for the end is not yet; indeed, such a history probably never will be written, and yet it is still more probable that the events it would record can never be quite forgotten. It was something new to see a knot of adventurers, men of broken fortune, without character and without credit, possess themselves of an artery of commerce more important than was ever the Appian Way, and make levies, not only upon it for their own emolument, but, through it, upon the whole business of a nation. Nor could it fail to be seen that this was by no means in itself an end, but rather only a beginning. No people can afford to glance at these things in the columns of the daily press, and then dismiss them from memory. For Americans they involve many questions; — they touch very nearly the foundations of common truth and honesty without which that healthy public opinion cannot exist which is the life's breath of our whole political system.

## I.

The history of the Erie Railway has been a checkered one. Chartered in 1832, and organized in 1833, the cost of its construction was then estimated at three millions of dollars, of which but one million were subscribed. By the time the first report was made the estimated cost had increased to six millions, and the work of construction was actually begun on the strength of stock subscriptions of a million and a half, and a loan of three millions from the State. In 1842 the estimated cost had increased to twelve millions and a half, and both means in hand and credit were wholly exhausted. Subscription-books were opened, but no names were entered in them; the city of New York was applied to, and refused a loan of its credit; again the legislature was besieged, but the aid from this quarter was now hampered with inadmissible conditions; accordingly work was suspended, and the property of the insolvent corporation passed into the hands of assignees. In 1845 the State came again to the rescue; it surrendered all claim to the three millions it had already lent to the company; and one half of their old subscriptions having been given up by the stockholders, and a new subscription of three millions raised, the whole property of the road was mortgaged for three millions more. At last, in 1851, eighteen years after its commencement, the road was opened from Lake Erie to tide-water. Its financial troubles had, however, as yet only begun, for in 1859 it could not meet the interest on its mortgages, and passed into the hands of a receiver. In 1861 an arrangement of interests was effected, and a new company was organized. The next year the old New York & Erie Railroad Company disappeared under a foreclosure of the fifth mortgage, and the present Erie Railway Company rose from its ashes. Meanwhile the original estimate of three millions had developed into an actual outlay of fifty millions; the 470 miles of track opened in 1842 had expanded into 773 miles in 1868; and the revenue, which the projectors had "confident-

ly" estimated at something less than two millions in 1833, amounted to over five millions when the road passed into the hands of a receiver in 1859, and in 1865 reached the enormous sum of sixteen millions and a half. The road was, in truth, a magnificent enterprise, worthy to connect the great lakes with the great seaport of America. Scaling lofty mountain ranges, running through fertile valleys and by the banks of broad rivers, connecting the Hudson, the Susquehanna, the St. Lawrence, and the Ohio, it stood forth a monument at once of engineering skill and of commercial enterprise.

The series of events in the Erie history which culminated in the struggle about to be narrated may be said to have had its origin some seventeen or eighteen years before, when Mr. Daniel Drew first made his appearance in the Board of Directors, where he remained down to the year 1868, generally holding also the office of treasurer of the corporation. Mr. Drew is what is known as a self-made man. Born in the year 1797, as a boy he drove cattle down from his native town of Carmel, in Putnam County, to the market of New York City, and, subsequently, was for years proprietor of the Bull's Head Tavern. Like his contemporary, and ally or opponent, — as the case might be, — Cornelius Vanderbilt, he built up his fortunes in the steamboat interest, and subsequently extended his operations over the rapidly developing railroad system. Shrewd, unscrupulous, and very illiterate, — a strange combination of superstition and faithlessness, of daring and timidity, — often good-natured and sometimes generous, — he ever regarded his fiduciary position of director in a railroad as a means of manipulating its stock for his own advantage. For years he had been the leading bear of Wall Street, and his favorite haunts were the secret recesses of Erie. As treasurer of that corporation, he had, in its frequently recurring hours of need, advanced it sums which it could not have obtained elsewhere, and the obtaining of which was a necessity. He had been at once a good friend of the road and the worst enemy it had as yet known. His management of his favorite stock had been cunning and recondite, and his ways inscru-

table. Those who sought to follow him, and those who sought to oppose him, alike found food for sad reflection; until at last he won for himself the expressive *sobriquet* of the Speculative Director. Sometimes, though rarely, he suffered greatly in the complications of Wall Street; more frequently he inflicted severe damage upon others. On the whole, however, his fortunes had greatly prospered, and the outbreak of the Erie war found him the actual possessor of some millions, and the reputed possessor of many more.

In the spring of 1866 Mr. Drew's manipulations of Erie culminated in an operation which was at the time regarded as a masterpiece; subsequent experience has, however, so improved upon it that it is now looked upon as an ordinary and inartistic piece of what is called "railroad financiering," a class of operations formerly known by a more opprobrious name. The stock of the road was then selling at about 95, and the corporation was, as usual, in debt, and in pressing need of money. As usual, also, it resorted to its treasurer. Mr. Drew stood ready to make the desired advances — upon security. Some twenty-eight thousand shares of its own authorized stock, which had never been issued, were at the time in the hands of the company, which also claimed, under the statutes of New York, the right of raising money by the issue of bonds, convertible, at the option of the holder, into stock. The twenty-eight thousand unissued shares, and bonds for three millions of dollars, convertible into stock, were placed by the company in the hands of its treasurer, as security for a cash loan of $ 3,500,000. The negotiation had been quietly effected, and Mr. Drew's campaign now opened. Once more he was short of Erie. While Erie was buoyant, — while it steadily approximated to par, — while speculation was rampant, and that outside public, the delight and the prey of Wall Street, was gradually drawn in by the fascination of amassing wealth without labor, — quietly and stealthily, through his agents and brokers, the grave, desponding operator was daily concluding his contracts for the future delivery of stock at current prices. At last the hour had come. Erie

was rising, Erie was scarce, the great bear had many contracts to fulfil, and where was he to find the stock? His victims were not kept long in suspense. Mr. Treasurer Drew laid his hands upon his collateral. In an instant the bonds for three millions were converted into an equivalent amount of capital stock, and fifty-eight thousand shares, dumped, as it were, by the cart-load in Broad Street, made Erie as plenty as even Drew could desire. Before the astonished bulls could rally their faculties, the quotations had fallen from 95 to 50, and they realized that they were hopelessly entrapped.*

The whole transaction, of course, was in no respect more creditable than any result, supposed to be one of chance or skill, which, in fact, is made to depend upon the sorting of a pack of cards, the dosing of a race-horse, or the selling out of his powers by a "walkist." But the gambler, the patron of the turf, or the pedestrian represents, as a rule, himself alone, and his character is generally so well understood as

* A bull, in the slang of the stock exchange, is one who endeavors to increase the market price of stocks, as a bear endeavors to depress it. The bull is supposed to toss the thing up with his horns, and the bear to drag it down with his claws. The vast majority of stock operations are pure gambling transactions. One man agrees to deliver, at some future time, property which he has not got, to another man who does not care to own it. It is only one way of betting on the price at the time when the delivery should be made; if the price rises in the mean while, the bear pays to the bull the difference between the price agreed upon and the price to which the property has risen; if it falls, he receives the difference from the bull. All operations, as they are termed, of the stock exchange are directed to this depression or elevation of stocks, with a view to the settlement of differences. A "pool" is a mere combination of men contributing money to be used to this end, and a "corner" is a result arrived at when one combination of gamblers, secretly holding the whole or greater part of any stock or species of property, induces another combination to agree to deliver a large further quantity at some future time. When the time arrives, the second combination, if the corner succeeds, suddenly finds itself unable to buy the amount of the stock or property necessary to enable it to fulfil its contracts, and the first combination fixes at its own will the price at which differences must be settled. The corner fails or is broken, when those who agree to deliver succeed in procuring the stock or property, and fulfilling their contracts. The *argot* of the exchange is, however, a language by itself, and very difficult of explanation to the wholly uninitiated. It can only be said that all combinations of interests and manipulations of values are mere weapons in the hands of bulls and bears for elevating or depressing values, with a view to the payment of differences.

to be a warning to all the world. The case of the treasurer of a great corporation is different. He occupies a fiduciary position. He is a trustee, — a guardian. Vast interests are confided to his care; every shareholder of the corporation is his ward; if it is a railroad, the community itself is his *cestui que trust*. But passing events, accumulating more thickly with every year, have thoroughly corrupted the public morals on this subject. A directorship in certain great corporations has come to be regarded as a situation in which to make a fortune, the possession of which is no longer dishonorable. The method of accumulation is both simple and safe. It consists in giving contracts as a trustee to one's self as an individual, or in speculating in the property of one's *cestui que trust*, or in using the funds confided to one's charge, as treasurer or otherwise, to gamble with the real owners of those funds for their own property, and that with cards packed in advance. The wards themselves expect their guardians to throw the dice against them for their own property, and are surprised, as well as gratified, if the dice are not loaded. These proceedings, too, are looked upon as hardly reprehensible, yet they strike at the very foundation of existing society. The theory of representation, whether in politics or in business, is of the essence of modern development. Our whole system rests upon the sanctity of the fiduciary relations. Whoever betrays them, a director of a railroad no less than a member of Congress or the trustee of an orphans' asylum, is the common enemy of every man, woman, and child who lives under representative government. The unscrupulous director is far less entitled to mercy than the ordinary gambler, combining as he does the character of the traitor with the acts of the thief.

No acute moral sensibility on this point, however, has for some years troubled Wall Street, nor, indeed, the country at large. As a result of the transaction of 1866, Mr. Drew was looked upon as having effected a surprisingly clever operation, and he retired from the field hated, feared, wealthy, and admired. This episode of Wall Street history took its place as a brilliant success beside the famous Prairie du Chien and Harlem

"corners," and, but for subsequent events, would soon have been forgotten. Its close connection, however, with more important though later incidents of Erie history seems likely to preserve its memory fresh. Great events were impending ; a new man was looming up in the railroad world, introducing novel ideas and principles, and it could hardly be that the new and old would not come in conflict. Cornelius Vanderbilt, commonly known as Commodore Vanderbilt, was now developing his theory of the management of railroads.

Born in the year 1794, Vanderbilt was a somewhat older man than Drew. There are several points of resemblance in the early lives of the two men, and many points of curious contrast in their characters. Vanderbilt, like Drew, was born in very humble circumstances in the State of New York, and like him also received little education. He began life by ferrying passengers and produce from Staten Island to New York City. Subsequently, he too laid the foundation of his great fortune in the growing steamboat navigation, and likewise, in due course of time, transferred himself to the railroad interest. When at last, in 1868, the two came into collision as representatives of the old system of railroad management and of the new, they were each threescore and ten years of age, and had both been successful in the accumulation of millions, — Vanderbilt even more so than Drew. They were probably equally unscrupulous and equally selfish ; but, while the cast of Drew's mind was sombre and bearish, Vanderbilt was gay and buoyant of temperament, little given to thoughts other than of this world, a lover of horses and of the good things of life. The first affects prayer-meetings, and the last is a devotee of whist. Drew, in Wall Street, is by temperament a bear, while Vanderbilt could hardly be other than a bull. Vanderbilt must be allowed to be by far the superior man of the two. Drew is astute and full of resources, and at all times a dangerous opponent ; but Vanderbilt takes larger, more comprehensive views, and his mind has a vigorous grasp which that of Drew seems to want. While, in short, in a wider field, the one might have made himself a great and successful

despot, the other would hardly have aspired beyond the control of the jobbing department of some corrupt government. Accordingly, while in Drew's connection with the railroad system his operations and manipulations evince no qualities calculated to excite even a vulgar admiration or respect, it is impossible to regard Vanderbilt's methods or aims without recognizing the magnitude of the man's ideas and conceding his abilities. He involuntarily excites feelings of admiration for himself and alarm for the public. His ambition is a great one. It seems to be nothing less than to make himself master in his own right of the great channels of communication which connect the city of New York with the interior of the continent, and to control them as his private property. Drew sought to carry to a mean perfection the old system of operating successfully from the confidential position of director, neither knowing anything nor caring anything for the railroad system, except in its connection with the movements of the stock exchange, and he succeeded in his object. Vanderbilt, on the other hand, as selfish, harder, and more dangerous, though less subtle, has by instinct, rather than by intellectual effort, seen the full magnitude of the system, and through it has sought to make himself a dictator in modern civilization, moving forward to this end step by step with a sort of pitiless energy which has seemed to have in it an element of fate. As trade now dominates the world, and railways dominate trade, his object has been to make himself the virtual master of all by making himself absolute lord of the railways. Had he begun his railroad operations with this end in view, complete failure would have been almost certainly his reward. Commencing as he did, however, with a comparatively insignificant objective point, — the cheap purchase of a bankrupt stock, — and developing his ideas as he advanced, his power and his reputation grew, until an end which at first it would have seemed madness to entertain became at last both natural and feasible.

Two great lines of railway traverse the State of New York and connect it with the West, — the Erie and the New York Central. The latter communicates with the city by a great

river and by two railroads. To get these two roads — the Harlem and the Hudson River — under his own absolute control, and then, so far as the connection with the Central was concerned, to abolish the river, was Vanderbilt's immediate object. First making himself master of the Harlem road, he there learned his early lessons in railroad management, and picked up a fortune by the way. A few years ago Harlem had no value. As late as 1860 it sold for eight or nine dollars per share; and in January, 1863, when Vanderbilt had got the control, it had risen only to 30. By July of that year it stood at 92, and in August was suddenly raised by a "corner" to 179. The next year witnessed a similar operation. The stock which sold in January at less than 90 was settled for in June in the neighborhood of 285. On one of these occasions Mr. Drew is reported to have contributed a sum approaching half a million to his rival's wealth. More recently the stock had been floated at about 130. It was in the successful conduct of this first experiment that Vanderbilt showed his very manifest superiority over previous railroad managers. The Harlem was, after all, only a competing line, and competition was proverbially the rock ahead in all railroad enterprise. The success of Vanderbilt with the Harlem depended upon his getting rid of the competition of the Hudson River railroad. An ordinary manager would have resorted to contracts, which are never carried out, or to opposition, which is apt to be ruinous. Vanderbilt, on the contrary, put an end to competition by buying up the competing line. This he did at about par, and, in due course of time, the stock was sent up to 180. Thus his plans had developed by another step, while through a judicious course of financiering and watering and dividing, a new fortune had been secured by him. By this time Vanderbilt's reputation as a railroad manager — as one who earned dividends, created stock, and invented wealth — had become very great, and the managers of the Central brought that road to him, and asked him to do with it as he had done with the Harlem and Hudson River. He accepted the proffered charge, and now, prob-

ably, the possibilities of his position and the magnitude of the prize within his grasp at last dawned on his mind. Unconsciously to himself, working more wisely than he knew, he had developed to its logical conclusion one potent element of modern civilization.

Gravitation is the rule, and centralization the natural consequence, in society no less than in physics. Physically, morally, intellectually, in population, wealth, and intelligence, all things tend to concentration. One singular illustration of this law is almost entirely the growth of this century. Formerly, either governments, or individuals, or, at most, small combinations of individuals, were the originators of all great works of public utility. Within the present century only has democracy found its way through the representative system into the combinations of capital, small shareholders combining to carry out the most extensive enterprises. And yet already our great corporations are fast emancipating themselves from the State, or rather subjecting the State to their own control, while individual capitalists, who long ago abandoned the attempt to compete with them, will next seek to control them. In this dangerous path of centralization Vanderbilt has taken the latest step in advance. He has combined the natural power of the individual with the factitious power of the corporation. The famous "L'état, c'est moi" of Louis XIV. represents Vanderbilt's position in regard to his railroads. Unconsciously he has introduced Cæsarism into corporate life. He has, however, but pointed out the way which others will tread. The individual will hereafter be engrafted on the corporation, — democracy running its course, and resulting in imperialism; and Vanderbilt is but the precursor of a class of men who will wield within the State a power created by the State, but too great for its control. He is the founder of a dynasty.

From the moment Vanderbilt stepped into the management of the Central, but a single effort seemed necessary to give the new railroad king absolute control over the railroad system, and consequently over the commerce, of New York. By advancing only one step he could securely levy his tolls on

the traffic of a continent. Nor could this step have seemed difficult to take. It was but to repeat with the Erie his successful operation with the Hudson River road. Not only was it a step easy to take, but here again, as so many times before, a new fortune seemed ready to drop into his hand. The Erie might well yield a not less golden harvest than the Central, Hudson River, or Harlem. There was indeed but one obstacle in the way, — the plan might not meet the views of the one man who at that time possessed the wealth, cunning, and combination of qualities which could defeat it, that man being the Speculative Director of the Erie, — Mr. Daniel Drew.

The New York Central passed into Vanderbilt's hands in the winter of 1866 – 67, and he marked the Erie for his own in the succeeding autumn. As the annual meeting of the corporation approached, three parties were found in the field contending for control of the road. One party was represented by Drew, and might be called the party in possession, that which had long ruled the Erie, and made it what it was, — the Scarlet Woman of Wall Street. Next came Vanderbilt, flushed with success, and bent upon fully gratifying his great instinct for developing imperialism in corporate life. Lastly, a faction made its appearance composed of some shrewd and ambitious Wall Street operators and of certain persons from Boston, who sustained for the occasion the novel character of railroad reformers. This party, it is needless to say, was as unscrupulous, and, as the result proved, as able as either of the others ; it represented nothing but a raid made upon the Erie treasury in the interest of a thoroughly bankrupt New England corporation, of which its members had the control. The history of this corporation, known as the Boston, Hartford, & Erie Railroad, — a projected feeder and connection of the Erie, — would be one curious to read, though very difficult to write. Its name was synonymous with bankruptcy, litigation, fraud, and failure. If the Erie was of doubtful repute in Wall Street, the Boston, Hartford, & Erie had long been of worse than doubtful repute in State Street. Of late years,

under able and persevering, if not scrupulous management, the bankrupt, moribund company had been slowly struggling into new life, and in the spring of 1867 it had obtained, under certain conditions, from the Commonwealth of Massachusetts, a subsidy in aid of the construction of its road. One of the conditions imposed obliged the corporation to raise a sum from other sources still larger than that granted by the State. Accordingly, those having the line in charge looked abroad for a victim, and fixed their eyes upon the Erie.

As the election day drew near, Erie was of course for sale. A controlling interest of stockholders stood ready to sell their proxies, with entire impartiality, to any of the three contending parties, or to any man who would pay the market price for them. Nay, more, the attorney of one of the contending parties, as it afterwards appeared, after an ineffectual effort to extort black mail, actually sold the proxies of his principal to another of the contestants, and his doing so seemed to excite mirth rather than surprise. Meanwhile the representatives of the Eastern interest played their part to admiration. Taking advantage of some Wall Street complications just then existing between Vanderbilt and Drew, they induced the former to ally himself with them, and the latter saw that his defeat was inevitable. Even at this time the Vanderbilt party contemplated having recourse, if necessary, to the courts, and a petition for an injunction had been prepared, setting forth the details of the "corner" of 1866. On the Sunday preceding the election Drew, in view of his impending defeat, called upon Vanderbilt. That gentleman, thereupon, very amicably read to him the legal documents prepared for his benefit; whereupon the ready treasurer at once turned about, and, having hitherto been hampering the Commodore by his bear operations, he now agreed to join hands with him in giving to the market a strong upward tendency. Meanwhile the other parties to the contest were not idle. At the same house, at a later hour in the day, Vanderbilt explained to the Eastern adventurers his new plan of operations, which included the continuance of Drew in his directorship. These gentlemen were

puzzled, not to say confounded, by this sudden change of front. An explanation was demanded, some plain language followed, and the parties separated, leaving everything unsettled; but only to meet again at a later hour at the house of Drew. There Vanderbilt brought the new men to terms by proposing to Drew a bold *coup de main*, calculated to throw them entirely out of the direction. Before the parties separated that night a written agreement had been entered into, providing that, to save appearances, the new board should be elected without Drew, but that immediately thereafter a vacancy should be created, and Drew chosen to fill it. He was therefore to go in as one of two directors in the Vanderbilt interest, that gentleman's nephew, Mr. Work, being the other.

This programme was faithfully carried out, and on the 2d of October Wall Street was at once astonished by the news of the defeat of the notorious leader of the bears, and bewildered by the immediate resignation of a member of the new board and the election of Drew in his place. Apparently he had given in his submission, the one obstacle to success was removed, and the ever-victorious Commodore had now but to close his fingers on his new prize. Virtual consolidation in the Vanderbilt interest seemed a foregone conclusion.

The reinstalment of Drew was followed by a period of hollow truce. A combination of capitalists, in pursuance of an arrangement already referred to, took advantage of this to transfer as much as possible of the spare cash of the "outside public" from its pockets to their own. A "pool" was formed, in view of the depressed condition of Erie, and Drew was left to manipulate the market for the advantage of those whom it might concern. The result of the Speculative Director's operations supplied a curious commentary on the ethics of the stock exchange, and made it questionable whether the ancient adage as to honor among a certain class in society is of universal application, or confined to its more persecuted members. One contributor to the "pool," in this instance, was Mr. ——, a friend of Vanderbilt. The ways of Mr. Drew were, as usual, past finding out; Mr. ——, however, grew impatient of wait-

ing for the anticipated rise in Erie, and it occurred to him that, besides participating in the profits of the "pool," he might as well turn an honest penny by collateral operations on his own account, looking to the expected rise. Before embarking on his independent venture, however, he consulted Mr. Drew, it is said, who entirely declined to express any judgment as to the enterprise, but at the same time agreed to loan Mr. —— out of the "pool" any moneys he might require upon the security usual in such cases. Mr. —— availed himself of the means thus put at his disposal, and laid in a private stock of Erie. Still, however, the expected rise did not take place. Again he applied to Mr. Drew for information, but with no better success than before; and again, tempted by the cheapness of Erie, he borrowed further funds of the "pool," and made new purchases of stock. At last the long-continued depression of Erie aroused a dreadful suspicion in the bull operator, and inquiries were set on foot. He then discovered, to his astonishment and horror, that his stock had come to him through certain of the brokers of Mr. Drew. The members of the "pool" were at once called together, and Mr. Drew was appealed to on behalf of Mr. ——. It was suggested to him that it would be well to run Erie up to aid a confederate. Thereupon, with all the coolness imaginable, Mr. Drew announced that the "pool" had no Erie and wanted no Erie; that it had sold out its Erie and had realized large profits, which he now proposed to divide. Thereafter who could pretend to understand Daniel Drew? who could fail to appreciate the humors of Wall Street? The controller of the "pool" had actually lent the money of the "pool" to one of the members of the "pool," to enable him to buy up the stock of the "pool"; and having thus quietly saddled him with it, the controller proceeded to divide the profits, and calmly returned to the victim a portion of his own money as his share of the proceeds. Yet, strange to say, Mr. —— wholly failed to see the humorous side of the transaction, and actually feigned great indignation.

This, however, was a mere sportive interlude between the

graver scenes of the drama. The real conflict was now impending. Commodore Vanderbilt stretched out his hand to grasp Erie. Erie was to be isolated and shut up within the limits of New York ; it was to be given over, bound hand and foot, to the lord of the Central. To perfect this programme, the representatives of all the competing lines met, and a proposition was submitted to the Erie party looking to a practical consolidation on certain terms of the Pennsylvania Central, the Erie, and the New York Central, and a division among the contracting parties of all the earnings from the New York City travel. A new illustration was thus to be afforded, at the expense of the trade and travel to and from the heart of a continent, of George Stephenson's famous aphorism, that where combination is possible competition is impossible. The Erie party, however, represented that their road earned more than half of the fund of which they were to receive only one third. They remonstrated and proposed modifications, but their opponents were inexorable. The terms were too hard ; the conference led to no result ; a ruinous competition seemed impending as the alternative to a fierce war of doubtful issue. Both parties now retired to their camps, and mustered their forces in preparation for the first overt act of hostility. They had not long to wait.

Vanderbilt was not accustomed to failure, and in this case the sense of treachery, the bitter consciousness of having been outwitted in the presence of all Wall Street, gave a peculiar sting to the rebuff. A long succession of victories had intensified his natural arrogance, and he was by no means disposed, even apart from the failure of his cherished plans, to sit down and nurse an impotent wrath in presence of an injured prestige. Foiled in intrigue, he must now have recourse to his favorite weapon, — the brute force of his millions. He therefore prepared to go out into Wall Street in his might, and to make himself master of the Erie, as before he had made himself master of the Hudson River road. The task in itself was one of magnitude. The volume of stock was immense ; all of it was upon the street, and the necessary ex-

penditure involved many millions of dollars. The peculiar difficulty of the task, however, lay in the fact that it had to be undertaken in the face of antagonists so bold, so subtle, so unscrupulous, so thoroughly acquainted with Erie, as well as so familiar with all the devices and tricks of fence of Wall Street, as were those who now stood ready to take up the gage which the Commodore so arrogantly threw down.

The first open hostilities took place on the 17th of February. For some time Wall Street had been agitated with forebodings of the coming hostilities, but not until that day was recourse had to the courts. Vanderbilt had two ends in view when he sought to avail himself of the processes of law. In the first place, Drew's long connection with Erie, and especially the unsettled transactions arising out of the famous corner of 1866, afforded admirable ground for annoying offensive operations ; and, in the second place, these very proceedings, by throwing his opponent on the defensive, afforded an excellent cover for Vanderbilt's own transactions in Wall Street. It was essential to his success to corner Drew, but to corner Drew at all was not easy, and to corner him in Erie was difficult indeed. Very recent experiences, of which Vanderbilt was fully informed, no less than the memories of 1866, had fully warned the public how manifold and ingenious were the expedients through which the cunning treasurer furnished himself with Erie, when the exigencies of his position demanded fresh supplies. It was, therefore, very necessary for Vanderbilt that he should, while buying Erie with one hand in Wall Street, with the other close, so far as he could, that apparently inexhaustible spring from which such generous supplies of new stock were wont to flow. Accordingly, on the 17th of February, Mr. Frank Work, the only remaining representative of the Vanderbilt faction in the Erie direction, accompanied by Mr. Vanderbilt's attorneys, Messrs. Rapallo and Spenser, made his appearance before Judge Barnard, of the Supreme Court of New York, then sitting in chambers, and applied for an injunction against Treasurer Drew and his brother directors, of the Erie Railway, restraining them from

the payment of interest or principal of the three and a half millions borrowed of the treasurer in 1866, as well as from releasing Drew from any liability or cause of action the company might have against him, pending an investigation of his accounts as treasurer; on the other hand, Drew was to be enjoined from taking any legal steps towards compelling a settlement. A temporary injunction was granted in accordance with the petition, and a further hearing was assigned for the 21st. Two days later, however, — on the 19th of the month, — without waiting for the result of the first attack, the same attorneys appeared again before Judge Barnard, and now in the name of the people, acting through the Attorney-General, petitioned for the removal from office of Treasurer Drew. The papers in the case set forth some of the difficulties which beset the Commodore, and exposed the existence of a new fountain of Erie stock. It appeared that there was a recently enacted statute of New York which authorized any railroad company to create and issue its own stock in exchange for the stock of any other road under lease to it. The petition then alleged that Mr. Drew and certain of his brother directors, had quietly possessed themselves of a worthless road connecting with the Erie, and called the Buffalo, Bradford, & Pittsburg Railroad, and had then, as occasion and their own exigencies required, proceeded to supply themselves with whatever Erie stock they wanted, by leasing their own road to the road of which they were directors, and then creating stock and issuing it to themselves, in exchange, under the authority vested in them by law. The uncontradicted history of this transaction, as subsequently set forth on the very doubtful authority of a leading Erie director, affords, indeed, a most happy illustration of brilliant railroad financiering, whether true in this case or not. The road, it was stated, cost the purchasers, as financiers, some $250,000; as proprietors, they then issued in its name bonds for two million dollars, payable to one of themselves, who now figured as trustee. This person, then, shifting his character, drew up, as counsel for both parties, a contract leasing this road to the Erie Railway for four hun-

dred and ninety-nine years, the Erie agreeing to assume the bonds; reappearing in their original character of Erie directors, these gentlemen then ratified the lease, and thereafter it only remained for them to relapse into the rôle of financiers, and to divide the proceeds. All this was happily accomplished, and the Erie Railway lost and some one gained $ 140,000 a year by the bargain. The skilful actors in this much-shifting drama probably proceeded on the familiar theory that exchange is no robbery; and the expedient was certainly ingenious.

Such is the story of this proceeding as told under oath by one who must have known the whole truth. That the facts are correctly set forth by no means follows. Indeed, many parts of this narrative are open to this criticism. The evidence on which it is founded may be sufficiently clear, but unfortunately the witnesses are not seldom wholly unworthy of credence. The formality of an oath may accompany plausible statements without giving to them the slightest additional weight. In this case the sworn allegations were made, and they implicated certain respectable men; it can only be said of them that their falsehood is not patent, and that they are thoroughly in character with other transactions known to be true. If the facts of the case were correctly stated, or had in them an element of truth, it is difficult to see what fiduciary relation these directors, as trustees, did not violate. However this may be, it is indisputable that the supply of Erie on the market had been largely increased from the source indicated, and Commodore Vanderbilt naturally desired to put some limit to the amount of the stock in existence, a majority of which he sought to control. Accordingly it was now further ordered by Mr. Justice Barnard that Mr. Drew should show cause on the 21st why the prayer of the petitioner should not be granted, and meanwhile he was temporarily suspended from his position as treasurer and director.

It was not until the 3d of March, however, that any decisive action was taken by Judge Barnard on either of the petitions before him. Even then, that in the name of the Attor-

ney-General was postponed for final hearing until the 10th of the month ; but, on the application of Work, an injunction was issued restraining the Erie board from any new issue of capital stock, by conversion of bonds or otherwise, in addition to the 251,058 shares appearing in the previous reports of the road, and forbidding the guaranty by the Erie of the bonds of any connecting line of road. While this last provision of the order was calculated to furnish food for thought to the Boston party, matter for meditation was supplied to Mr. Drew by other clauses, which specially forbade him, his agents, attorneys, or brokers, to have any transactions in Erie, or fulfil any of his contracts already entered into, until he had returned to the company sixty-eight thousand shares of capital stock, alleged to be the number involved in the unsettled transaction of 1866, and the more recent Buffalo, Bradford, & Pittsburg exchange. A final hearing was fixed for the 10th of March on both injunctions.

Things certainly did not now promise well for Treasurer Drew and the bear party. Vanderbilt and the bulls seemed to arrange everything to meet their own views ; apparently they had but to ask and it was granted. If any virtue existed in the processes of law, if any authority was wielded by a New York court, it now seemed as if the very head of the bear faction must needs be converted into a bull in his own despite, and to his manifest ruin. He, in this hour of his trial, was to be forced by his triumphant opponent to make Erie scarce by returning into its treasury sixty-eight thousand shares, — one fourth of its whole capital stock of every description. So far from manufacturing fresh Erie and pouring it into the street, he was to be cornered by a writ, and forced to work his own ruin in obedience to an injunction. Appearances are, however, proverbially deceptive, and all depended on the assumption that some virtue did exist in the processes of law, and that some authority was wielded by a New York court. In spite of the threatening aspect of his affairs, it was very evident that the nerves of Mr. Drew and his associates were not seriously affected. Wall Street watched him

with curiosity not unmingled with alarm; for this was a conflict of Titans. Hedged all around with orders of the court, suspended, enjoined, and threatened with all manner of unheard-of processes, with Vanderbilt's wealth standing like a lion in his path, and all Wall Street ready to turn upon him and rend him, — in presence of all these accumulated terrors of the court-room and of the exchange, the Speculative Director was not less speculative than was his wont. He seemed rushing on destruction. Day after day he pursued the same "short"* tactics; contract after contract was put out for the future delivery of stock at current prices, and this, too, in the face of a continually rising market. Evidently he did not yet consider himself at the end of his resources.

It was equally evident, however, that he had not much time to lose. It was now the 3d of March, and the anticipated "corner" might be looked for about the 10th. As usual, some light skirmishing took place as a prelude to the heavy shock of decisive battle. The Erie party very freely and openly expressed a decided lack of respect, and something approaching contempt, for the purity of that particular fragment of the judicial ermine which was supposed to adorn the person of Mr. Justice Barnard. They did not pretend to conceal their conviction that this magistrate was a piece of the Vanderbilt property, and they very plainly announced their intention of seeking for justice elsewhere. With this end in view they betook themselves to their own town of Binghamton, in the county of Broome, where they duly presented themselves before Mr. Justice Balcom, of the Supreme Court. The existing judicial system of New York divides the State into eight distinct districts, each of which has an independent Supreme Court of four judges, elected by the citizens of that district. The first district alone enjoys five judges, the fifth being the Judge Barnard already referred to. These local judges, however, are clothed with certain equity powers in actions commenced before them, which run throughout the

* An operator is said to be "short" when he has agreed to deliver that which he has not got. He wagers, in fact, on a fall.

State. As one subject of litigation, therefore, might affect many individuals, each of whom might initiate legal proceedings before any of the thirty-three judges; which judge, again, might forbid proceedings before any or all of the other judges, or issue a stay of proceedings in suits already commenced, and then proceed to make orders, to consolidate actions, and to issue process for contempt, — it was not improbable that, sooner or later, strange and disgraceful conflicts of authority would arise, and that the law would fall into contempt. Such a system can, in fact, be sustained only so long as co-ordinate judges use the delicate powers of equity with a careful regard to private rights and the dignity of the law, and therefore, more than any which has ever been devised, it calls for a high average of learning, dignity, and personal character in the occupants of the bench. When, therefore, the ermine of the judge is flung into the kennel of party politics and becomes a part of the spoils of political victory; when by any chance partisanship, brutality, and corruption become the qualities which especially recommend the successful aspirant to judicial honors, then the system described will be found to furnish peculiar facilities for the display of these characteristics.

Taking advantage of the occasion this system, so simple in theory, so complicated in practice, afforded for creating complications by obtaining conflicting orders from co-ordinate judges, the Erie party broke ground in a new suit. The injunction was no sooner asked of Judge Balcom than it was granted, and Mr. Frank Work, the Attorney-General, and all other parties litigant, were directed to show cause at Cortlandville on the 7th of March; and, meanwhile, Mr. Director Work, accused of being a spy in the councils of Erie, was temporarily suspended from his position, and all proceedings in the suits commenced before Judge Barnard were stayed. The moment, however, this order became known in New York, a new suit was commenced by the Vanderbilt interest in the name of Richard Schell; an urban judge cried check to the move of the rural judge, by forbidding any meeting of the

Erie board, or the transaction of any business by it, unless Director Work was at full liberty to participate therein. The first move of the Drew faction did not seem likely to result in any signal advantage to its cause.

All this, however, was mere skirmishing, and now the decisive engagement was near at hand. The plans of the Erie ring were matured, and, if Commodore Vanderbilt wanted the stock of their road, they were prepared to let him have all he desired. As usual the Erie treasury was at this time deficient in funds. As usual, also, Daniel Drew stood ready to advance all the funds required — on proper security. One kind of security, and only one, the company was disposed at this time to offer, — its convertible bonds under a pledge of conversion. The company could not issue stock outright, in any case, at less than par; its bonds bore interest, and were useless on the street; an issue of convertible bonds was another name for an issue of stock to be sold at market rates. The treasurer readily agreed to find a purchaser, and, in fact, he himself stood just then in pressing need of some scores of thousands of shares. Already at the meeting of the Board of Directors, on the 19th of February, a very deceptive account of the condition of the road, jockied out of the general superintendent, had been read and made public; the increased depot facilities, the projected double track, and the everlasting steel rails, had been made to do vigorous duty; and the board had, in the vaguest and most general language conceivable, clothed the Executive Committee with full power in the premises.* Im-

* This vote of the Board of Directors of the Erie Railway Company was the sole authority under which, without further consultation with the board, the stock of the road was increased four hundred and fifty thousand shares. It was worded as follows: —

"It being necessary for the finishing, completing, and operating the road of the company, to borrow money,

"*Resolved*, That under the provisions of the statute authorizing the loan of money for such purposes, the Executive Committee be authorized to borrow such sum as may be necessary, and to issue therefor such security as is provided for in such cases by the laws of this State; and that the president and secretary be authorized, under the seal of the company, to execute all needful and proper agreements and undertakings for such purpose."

The law referred to was Subdivision 10 of Section 28 of the General Rail-

mediately after the Board of Directors adjourned a meeting of the Executive Committee was held, and a vote to issue at once convertible bonds for ten millions gave a meaning to the very ambiguous language of the directors' resolve ; and thus, when apparently on the very threshold of his final triumph, this mighty mass of one hundred thousand shares of new stock was hanging like an avalanche over the head of Vanderbilt.

The Executive Committee had voted to sell the entire amount of these bonds at not less than 72½. Five millions were placed upon the market at once, and Mr. Drew's broker became the purchaser, Mr. Drew giving him a written guaranty against loss, and being entitled to any profit. It was all done in ten minutes after the committee adjourned, — the bonds issued, their conversion into stock demanded and complied with, and certificates for fifty thousand shares deposited in the broker's safe, subject to the orders of Daniel Drew. There they remained until the 29th, when they were issued, on his requisition, to certain others of that gentleman's army of brokers, much as ammunition might be issued before a general engagement. Three days later came the Barnard injunction, and Erie suddenly rose in the market. Then it was determined to bring up the reserves and let the eager bulls have the other five millions. The history of this second issue

road Act of 1850, which authorized the railroad companies to which it applied "to borrow such sums of money as may be necessary for completing, finishing, and operating the road "; to mortgage their roads as security for such loans; and to "confer on any holder of any bond issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of said company, at any time, not exceeding ten years from the date of the bond, under such regulations as the directors may see fit to adopt."

It was an open question whether this law applied at all to the Erie Railway Company, the amount of the capital stock of which was otherwise regulated by law; the bonds were issued and sold, not as bonds, but with a distinct pledge of immediate conversion into stock, and as an indirect way of doing that, the direct doing of which was clearly illegal; finally, as a matter of fact, the proceeds of these bonds were not used for "completing, finishing, or operating the road." As a matter of law the question is of no interest outside of New York, and is as yet undecided there. Of the good faith and morality of the transaction but one opinion exists anywhere.

was, in all respects, an episode worthy of Erie, and deserves minute relation. It was decided upon on the 3d, but before the bonds were converted Barnard's injunction had been served on every one connected with the Erie Road or with Daniel Drew. The 10th was the return day of the writ, but the Erie operators needed even less time for their deliberations. Monday, the 9th, was settled upon as the day upon which to defeat the impending "corner." The night of Saturday, the 7th, was a busy one in the Erie camp. While one set of counsel and clerks were preparing affidavits and prayers for strange writs and injunctions, the enjoined vice-president of the road was busy at home signing certificates of stock, to be ready for instant use in case a modification of the injunction could be obtained, and another set of counsel was in immediate attendance on the leaders themselves. Mr. Groesbeck, the chief of the Drew brokers, being himself enjoined, secured elsewhere, after one or two failures, a purchaser of the bonds, and took him to the house of the Erie counsel, where Drew and other directors and brokers then were. There the terms of the nominal sale were agreed upon, and a contract was drawn up transferring the bonds to this man of straw, who in return gave Mr. Drew a full power of attorney to convert or otherwise dispose of the bonds, in the form of a promissory note for their purchase-money; Mr. Groesbeck, meanwhile, with the fear of injunctions before his eyes, prudently withdrew into the next room, and amused himself by looking at the curiosities and conversing with the lawyers' young gentlemen. After the contract was closed, the purchaser was asked to sign an affidavit setting forth his ownership of the bonds and the refusal of the corporation to convert them into stock in compliance with their contract, upon which affidavit it was in contemplation to seek from some justice a writ of *mandamus* to compel the Erie Railway to convert them, the necessary papers for such a proceeding being then in course of preparation elsewhere. This the purchaser declined to do. One of the lawyers present then said: "Well, you can make the demand now; here is Mr. Drew, the treasurer of the company, and Mr. Gould, one

of the Executive Committee." In accordance with this suggestion a demand for the stock was then made, and, of course, at once refused; thereupon the scruples of the man of straw being all removed, the desired affidavit was signed. All business now being finished, the parties separated; the legal papers were ready, the convertible bonds had been disposed of, and the certificates of stock, for which they were to be exchanged, were signed in blank and ready for delivery.

Early Monday morning the Erie people were at work. Mr. Drew, the director and treasurer, had agreed to sell on that day fifty thousand shares of the stock, at 80, to the firms of which Mr. Fisk and Mr. Gould were members, these gentlemen also being Erie directors and members of the Executive Committee. The new certificates, made out in the names of these firms on Saturday night, were in the hands of the secretary of the company, who was strictly enjoined from allowing their issue. On Monday morning this official directed an employee of the road to carry these books of certificates from the West Street office of the company to the transfer clerk in Pine Street, and there to deliver them carefully. The messenger left the room, but immediately returned empty-handed, and informed the astonished secretary that Mr. Fisk had met him outside the door, taken from him the books of unissued certificates, and "run away with them." It was true; — one essential step towards conversion had been taken; the certificates of stock were beyond the control of an injunction. During the afternoon of the same day the convertible bonds were found upon the secretary's desk, where they had been placed by Mr. Belden, the partner in business of Director James Fisk, Jr.; the certificates were next seen in Broad Street.

Before launching the bolt thus provided, the conspirators had considered it not unadvisable to cover their proceedings, if they could, with some form of law. This probably was looked upon as an idle ceremony, but it could do no harm; and perhaps their next step was dictated by what has been called "a decent respect for the opinions of mankind," combined with a profound contempt for judges and courts of law.

Early on the morning of the 9th Judge Gilbert, a highly respected magistrate of the Second Judicial District, residing in Brooklyn, was waited upon by one of the Erie counsel, who desired to initiate before him a new suit in the Erie litigation, — this time, in the name of the Saturday evening purchaser of bonds and maker of affidavits. A writ of *mandamus* was asked for. This writ clearly did not lie in such a case ; the magistrate very properly declined to grant it, and the only wonder is that counsel should have applied for it. New counsel were then hurriedly summoned, and a new petition, in a fresh name, was presented. This petition was for an injunction, in the name of Belden, the partner of Mr. Fisk, and the documents then and there presented were probably as eloquent an exposure as could possibly have been penned of the lamentable condition into which the once honored judiciary of New York had fallen. The petition alleged that some time in February certain persons, among whom was especially named George G. Barnard, — the justice of the Supreme Court of the First District, — had entered into a combination to speculate in the stock of the Erie Railway, and to use the process of the courts for the purpose of aiding their speculation ; "and that, in furtherance of the plans of this combination," the actions in Work's name had been commenced before Barnard, who, the counsel asserted, was then issuing injunctions at the rate of half a dozen a day. It is impossible by any criticism to do justice to such audacity as this : the dumb silence of amazement is the only fitting commentary. Apparently, however, nothing that could be stated of his colleague across the river exceeded the belief of Judge Gilbert, for, after some trifling delays and a few objections on the part of the judge to the form of the desired order, the Erie counsel hurried away, and returned to New York with a new injunction, restraining all the parties to all the other suits from further proceedings, and from doing any acts in "furtherance of said conspiracy" ; — in one paragraph ordering the Erie directors, except Work, to continue in the discharge of their duties, in direct defiance of the injunction of one judge, and in the next, with an equal disre-

gard of another judge, forbidding the directors to desist from converting bonds into stock. Judge Gilbert having, a few hours before signing this wonderful order, refused to issue a writ of *mandamus*, it may be proper to add that the process of equity here resorted to, compelling the performance of various acts, is of recent invention, and is known as a "mandatory injunction."

All was now ready. The Drew party were enjoined in every direction. One magistrate had forbidden them to move, and another magistrate had ordered them not to stand still. If the Erie board held meetings and transacted business, it violated one injunction; if it abstained from doing so, it violated another. By the further conversion of bonds into stock pains and penalties would be incurred at the hands of Judge Barnard; the refusal to convert would be an act of disobedience to Judge Gilbert. Strategically considered, the position could not be improved, and Mr. Drew and his friends were not the men to let the golden moment escape them. At once, before a new injunction could be obtained, even in New York, fifty thousand shares of new Erie stock were flung upon the market. That day Erie was buoyant, — Vanderbilt was purchasing. His agents caught at the new stock as eagerly as at the old, and the whole of it was absorbed before its origin was suspected, and almost without a falter in the price. Then the fresh certificates appeared, and the truth became known. Erie had that day opened at 80 and risen rapidly to 83, while its rise even to par was predicted; suddenly it faltered, fell off, and then dropped suddenly to 71. Wall Street had never been subjected to a greater shock, and the market reeled to and fro like a drunken man between these giants, as they hurled about shares by the tens of thousands, and money by the million. When night put an end to the conflict, Erie stood at 78, the shock of battle was over, and the astonished brokers drew breath as they waited for the events of the morrow. The attempted "corner" was a failure, and Drew was victorious, — no doubt existed on that point. The question now was, could Vanderbilt sustain himself? In spite of all his

wealth, must he not go down before his cunning opponent?

The morning of the 11th found the Erie leaders still transacting business at the office of the corporation in West Street. It would seem that these gentlemen, in spite of the glaring contempt for the process of the courts of which they had been guilty, had made no arrangements for an orderly retreat beyond the jurisdiction of the tribunals they had set at defiance. They were speedily roused from their real or affected tranquillity by trustworthy intelligence that processes for contempt were already issued against them, and that their only chance of escape from incarceration lay in precipitate flight. At ten o'clock the astonished police saw a throng of panic-stricken railway directors — looking more like a frightened gang of thieves, disturbed in the division of their plunder, than like the wealthy representatives of a great corporation — rush headlong from the doors of the Erie office, and dash off in the direction of the Jersey ferry. In their hands were packages and files of papers, and their pockets were crammed with assets and securities. One individual bore away with him in a hackney-coach bales containing six millions of dollars in greenbacks. Other members of the board followed under cover of the night; some of them, not daring to expose themselves to the publicity of a ferry, attempted to cross in open boats concealed by the darkness and a March fog. Two directors, who lingered, were arrested; but a majority of the Executive Committee collected at the Erie Station in Jersey City, and there, free from any apprehension of Judge Barnard's pursuing wrath, proceeded to the transaction of business.

Meanwhile, on the other side of the river, Vanderbilt was struggling in the toils. As usual in these Wall Street operations, there was a grim humor in the situation. Had Vanderbilt failed to sustain the market, a financial collapse and panic must have ensued which would have sent him to the wall. He had sustained it, and had absorbed a hundred thousand shares of Erie. Thus when Drew retired to Jersey City he carried with him seven millions of his opponent's money, and the

Commodore had freely supplied the enemy with the sinews of war. He had grasped at Erie for his own sake, and now his opponents derisively promised to rehabilitate and vivify the old road with the money he had furnished them, so as more effectually to compete with the lines which he already possessed. Nor was this all. Had they done as they loudly claimed they meant to do, Vanderbilt might have hugged himself in the faith that, after all, it was but a question of time, and the prize would come to him in the end. He, however, knew well enough that the most pressing need of the Erie people was money with which to fight him. With this he had now furnished them abundantly, and he must have felt that no scruples would prevent their use of it.

Vanderbilt had, however, little leisure to devote to the enjoyment of the humorous side of his position. The situation was alarming. His opponents had carried with them in their flight seven millions in currency, which were withdrawn from circulation. An artificial stringency was thus created in Wall Street, and, while money rose, stocks fell, and unusual margins were called in. Vanderbilt was carrying a fearful load, and the least want of confidence, the faintest sign of faltering, might well bring on a crash. He already had a hundred thousand shares of Erie, not one of which he could sell. He was liable at any time to be called upon to carry as much more as his opponents, skilled by long practice in the manufacture of the article, might see fit to produce. Opposed to him were men who scrupled at nothing, and who knew every in and out of the money market. With every look and every gesture anxiously scrutinized, a position more trying than his can hardly be conceived. It is not known from what source he drew the vast sums which enabled him to surmount his difficulties with such apparent ease. His nerve, however, stood him in at least as good stead as his financial resources. Like a great general, in the hour of trial he inspired confidence. While fighting for life he could "talk horse" and play whist. The manner in which he then emerged from his troubles, serene and confident, was as extraordinary as the financial resources he commanded.

Meanwhile, before turning to the tide of battle, which now swept away from the courts of law into the halls of legislation, there are two matters to be disposed of; the division of the spoils is to be recounted, and the old and useless lumber of conflict must be cleared away. The division of profits accruing to Mr. Treasurer Drew and his associate directors, acting as individuals, was a fit conclusion to the stock issue just described. The bonds for five millions, after their conversion, realized nearly four millions of dollars, of which $3,625,000 passed into the treasury of the company. The trustees of the stockholders had therefore in this case secured a profit for some one of $375,000. Confidence in the good faith of one's kind is very commendable, but possession is nine points of the law. Mr. James Fisk, Jr., through whom the sales were mainly effected, declined to make any payments in excess of the $3,625,000, until a division of profits was agreed upon. It seems that, by virtue of a paper signed by Mr. Drew as early as the 19th of February, Gould, Fisk, and others were entitled to one half the profits he should make "in certain transactions." What these transactions were, or whether the official action of Directors Gould and Fisk was in any way influenced by the signing of this document, does not appear. Mr. Fisk now gave Mr. Drew, in lieu of cash, his uncertified check for the surplus $375,000 remaining from this transaction, with stock as collateral amounting to about the half of that sum. With this settlement, and the redemption of the collateral, Mr. Drew was fain to be content. Seven months afterwards he still retained possession of the uncertified check, in the payment of which, if presented, he seemed to entertain no great confidence. Everything, however, showed conclusively the advantage of operating from interior lines. While the Erie treasury was once more replete, three of the persons who had been mainly instrumental in filling it had not suffered in the transaction. The treasurer was richer by $180,000 directly, and he himself only knew by how much more incidentally. In like manner his faithful adjutants had profited to an amount as much exceeding

$60,000 each as their sagacity had led them to provide for.

The useless lumber of conflict, consisting chiefly of the numerous judges of the Supreme Court of New York and their conflicting processes of law, must next be disposed of. Judge Gilbert was soon out of the field. His process had done its work, and the Erie counsellors hardly deigned upon the 18th, which was the day fixed for showing cause, to go over to Brooklyn and listen to indignant denunciations on the part of their Vanderbilt brethren, as, with a very halting explanation of his hasty action, Judge Gilbert peremptorily denied the request for further delay, and refused to continue his injunction. It is due to this magistrate to say, that he is one of the most respected in the State of New York ; and when that is said, much is implied in the facts already stated as to his opinion of some of his brother judges. Judicial demoralization can go no further. If Judge Gilbert was out of the fray, however, Judge Barnard was not. The wrath and indignation of this curious product of a system of elective judiciary cannot be described, nor were they capable of utterance. They took strange forms of expression. At one time he sent all the papers relating to the alleged conspiracy down to the grand jury, and apparently sought thereby to indicate that he courted an investigation. The prosecuting attorneys, however, better instructed in the law, seem to have doubted whether a matter which was the proper subject for a legislative impeachment could satisfactorily be brought before a petty jury on an indictment, and did not pursue the investigation. Then, at a later day, the judge mysteriously intimated that the belief of both the counsel and the affiants in the truth of the charges contained in the complaint before Judge Gilbert was then a matter of investigation before a criminal body, to see whether or not it constituted perjury. Finally, a heavy collection of counter-affidavits purified the judicial skirts from their taint, but not until fresh and more aggravated grounds for indignation had presented themselves. It is unnecessary to go into the details of the strange and revolting scenes which

the next few months witnessed in the rooms of the Supreme Court. They read like some monstrous parody of the forms of law; some Saturnalia of bench and bar. The magistrate became more partisan than were the paid advocates before him, and all seemed to vie with one another in their efforts to bring their common profession into public contempt. Day and night detectives in the pay of suitors dogged the steps of the magistrate, and their sworn affidavits, filed in his own court, sought to implicate him in an attempt to kidnap Drew by means of armed ruffians, and to bring the fugitive by violence within reach of his process. Then, in retaliation, the judge openly avowed from the bench that his spies had penetrated into the consultations of the litigants, and he astonished a witness by angrily interrogating him as to an affidavit reflecting upon himself, to which that witness had declined to make oath.* At one moment he wept, as counsel detailed

* *Question by the Court to Mr. Belden.* Did not Mr. Field send you, two or three days ago, an affidavit filled with gross abuse of me, and you declined to sign it?

*Witness* (producing a paper). This is the affidavit. I said I would rather not sign it. . . . .

*Question by Mr. Field.* Did you show that affidavit to Judge Barnard?

*A.* I did not.

*Q.* How, then, did he learn of its being sent to you?

*Judge Barnard.* He does not know, and never will in this world. I am now doing as other people have been doing; I have been followed by detectives for four or five weeks all over the city, and now I am following others. . . . .

*Q.* Was it not stated openly to you, in a law office below Chambers Street, that you must prevent, at all hazards, Judge Barnard from hearing this case?

*A.* In hearing which case, Judge? I do not know which case you refer to.

*Q.* The case before me. . . . .

*Q.* When you were present at the Metropolitan Hotel, did not one of the counsel, who was there, when he heard the complaint read, say that it was a shame to put Judge Barnard in as a defendant, and did not Dudley Field say, that by doing so he could frighten him off the bench and overawe the balance?

*A.* I do not remember anything of it.

*Q.* See if one of the counsel did not tell you that it was a shame to put him in as one of the defendants, and whether another of the counsel did not tell you that that was the only way to scare him off the bench, and that you could overawe the balance of the judges?

*A.* I don't remember anything being said about overawing any one.

before him the story of his own grievances and the insults to which he had been subjected, and then again he vindicated his purity by select specimens of pothouse rhetoric.* When the Vanderbilt counsel moved to fix a day on which their opponents should show cause why a receiver of the proceeds of the last over-issue of stock should not be appointed, the judge astonished the petitioners by outstripping their eagerness, and appointing Vanderbilt's own son-in-law receiver on the spot. Then followed a fierce altercation in court, in which bench and bar took equal part, and which closed with the not unusual threat of impeaching the presiding judge.†

* "In this wide city of a million or a million and a half of inhabitants, where a man can be hired for five dollars to swear any man's life away, there is not one so base as to come upon this stand and swear that I had anything to do with any conspiracy."

† The matter before the court, regarding the bail of the contumacious directors, being disposed of, Mr. Clark, of the Vanderbilt counsel, rose and referred to another matter, which proved to be no less than an application for an order appointing a receiver of all the property, amounting to millions of dollars, which had been issued in violation of the injunction.

*Mr. Field.* This is an *ex parte* application and we do not care anything about it. The worse you make the case the better it will be in the end.

*Mr. Rapallo.* I ask your honor to make this order returnable on Monday morning.

*The Court.* I do not think it necessary to wait till Monday morning. You had better have it returnable forthwith.

*Mr. Clark.* We ask that that paper (the order to show cause instantly) be served upon Mr. Diven, who is now in court.

The order was then served on an individual director then in court, and Mr. Clark moved the appointment of the receiver.

*Judge Barnard.* Is there any objection to this application?

Mr. Field sat smilingly in his chair, which was tipped back on its rear legs, and looked composed in the extreme, but made no response to the inquiry of the judge.

*The Court.* Draw up an order appointing George A. Osgood receiver of this fund, with security in the sum of $1,000,000, and requiring these defendants to appear before a referee in regard to the matter.

*Mr. Field* (rising). The court will understand that this was *ex parte*.

*Mr. Clark.* We have given notice, and therefore this is not *ex parte*.

*Mr. Field.* There has been no notice given; there has been no service. This is *ex parte*, and now if any one will enter that order, I want to see him do it.

*Mr. Fullerton* (excitedly and earnestly). I dare enter that order, and will do it with your honor's permission.

*Mr. Field.* May it please the court, there have been no papers submitted

When Mr. John B. Haskin was placed upon the stand, there ensued a scene which Barnard himself not inaptly characterized the next day as "outrageous and scandalous, and insulting to the court." Upon this occasion the late Mr. James T. Brady seemed to be on the verge of a personal collision with the witness in open court; the purity of the presiding magistrate was impugned, his venality openly implied through a long cross-examination, and the witness acknowledged that he had himself in the course of his career undertaken for money to influence the mind of the judge privately "on the side of right." All the scandals of the practice of the law, and the private immoralities of lawyers, were dragged into the broad light of day; the whole system of favored counsel, of private argument, of referees, and of unblushing extortion, was freely discussed.* On a subsequent day the judge him-

in this case, and no affidavits presented on which this order is made. You have made it upon blank paper, and in complete absence of any regular proceeding whatever. I wish to say, however, that just so sure as this proceeding is being taken in this form, a day of reckoning will as surely come, when these parties will have to answer before some one for this action.

*Mr. Fullerton* (in a decidedly animated tone). Let that day come, and there will be a reckoning that you will have to bear, and so will every one of those men who have been engaged in this transaction.

* John B. Haskin was called as the next witness for the people, and examined by Mr. Clark, and testified that he was an attorney at law, and had practised about twenty-six years.

*Question by Mr. Clark.* Were you ever employed by Mr. Dudley Field, professionally, prior to the 1st of March, or since?

*A.* I was applied to by Mr. Dudley Field, the attorney for Mr. Gould, on the 5th or 6th of March last, to accept a retainer in this Erie Railroad controversy, which I declined. I had never previous to that time been employed or requested to act as counsel by Mr. Field.

Mr. Brady, "on his own responsibility," objected to this line of examination; but after some discussion it was admitted, and the witness continued: —

Mr. Dudley Field, on the morning of the 5th or 6th of March, called at my office, and desired to retain me as counsel in this Erie controversy. I asked him on which side, and he said, "The Drew side." I asked him before whom, and he said, before Judge Barnard. I replied that my intimacy had been very great with Judge Barnard, and that I supposed he thought my influence as associate in this case would assist his side of the litigation.

*Q.* What further was said?

*A.* He said that he desired me to accept a retainer in the case, and said that if I would do so, it might be the means of avoiding serious trouble which would take place in the legislature, as I was Judge Barnard's friend, and if I

self made inquiries as to a visit of two of the directors to one gentleman supposed to have peculiar influence over the judi-

would get that injunction modified I might, as his friend, prevent the terrible consequences which would result in this fight which was to take place, as Judge Barnard would be impeached; I then left him, and went into another office. In a short time Dudley Field came back, and handed me this book [producing a book], with his written modification of the injunction, as I believe, in his own handwriting, saying, "If you will get that signed by Judge Barnard, I will give you five thousand dollars; if that sum is not sufficient, I will make it more." I declined the offer; and having occasion to go to the City Hall to see Judge Barnard, I went, and met him at the Astor House, where he had gone with some friends, — John R. Hackett, Mr. Thomson, one of the directors of the Erie Railroad Company, and some others whom I do not recollect. I told him incidentally of this application to me, and he said: "Dudley Field must be a dirty fellow to apply to you for this modification in this way, for he applied to me in court this morning for this same modification, and I refused to grant it."

*Q.* Did you see Dudley Field again?

*A.* I did not see him again.

*Q.* Did you accept the retainer?

*A.* I did not accept the retainer or undertake the service.

. . . .

Cross-examination by Mr. James T. Brady.

*Q.* Well, Mr. Haskin, have you ever in your life been applied to by anybody, to use your influence, personally or professionally, with Judge Barnard, to accomplish any result whatever?

*A.* Yes, sir; I think I have.

*Q.* Personally?

*A.* Yes.

*Q.* Professionally?

*A.* Yes.

*Q.* To influence his action as a judge?

*A.* Well, no; not that.

*Q.* What, then?

*A.* Well, in cases where there were great interests at stake, to point out to him certain objects that were entitled to consideration.

*Q.* Did you ever agree or undertake to influence his action as a judge.

*A.* I might have done so on the side of right. What do you mean, sir?

*Mr. Brady.* O well, you will understand what I mean, sir. Have you never in all your life used your influence with Judge Barnard to induce him to make a decision in favor of some person in litigation whose cause you espoused?

*A.* I don't recollect any case of that kind.

*Q.* Will you swear that you have never done so?

*A.* I won't swear I did n't, because I might have done it in some case in the number of years I have been acquainted with him.

*Q.* Did you ever receive any kind of reward, directly or indirectly, for

cial mind, and evinced great familiarity with the negotiations then carried on, and even showed some disposition to extend

using any species of influence, or promising to use any species of influence, with Judge Barnard, or control or direct his action in any respect whatever?

*A.* I have never received anything; no, sir, except my legitimate fees, which I have received in references and so forth.

. . .

He then asked him about his connection with the Christy will case.

Witness said he was general counsel in that.

*Q.* How did you earn your fee?

*Witness.* I will not answer; it is none of your business; it is impertinent.

Mr. Clark interposed, and said it was irrelevant.

*Mr. Brady.* I want to show that Mr. Haskin received a fee for his influence with the judge to gain a decision at the General Term.

Mr. Haskin said there was a suit pending about the matter.

Mr. Brady repeated that when he went into the case he knew the hostility with which he would be met. He was prepared for it. He had known some of the men a great many years, and he had hitherto kept still. He would repeat the question about the Christy will case.

*Witness.* I refuse to answer; it is none of your business.

Witness further on gave some testimony as to what he said to Judge Barnard about the Merchants' Express Company case before that judge last summer; he (witness) was not a counsel in it, but when on a fishing excursion last summer he was talking with the court about the law of the case. He told the judge there were some cases in which a judge could not afford to do a favor for a friend; I knew you were in the case, Mr. Brady; I told Judge Barnard that the newspapers were all down on the express monopoly.

*Mr. Brady.* Did you tell Judge Barnard in what cases a judge could afford to do a favor for a friend! You say you told him there were some in which a judge could not do a favor.

*A.* I did not say there were any.

. .

The next day it was supposed that Mr. Field would be examined and the court-room was crowded. Judge Barnard, however, declined to proceed any further, and ordered the evidence of the previous day to be stricken from the record. He further stated that he had already been busily engaged during the day in the other court-room, and did not intend to sit here to gratify impertinent curiosity. . . . . In regard to the examination of Mr. Field, he (Mr. Field) could make his affidavit *ex parte*, and would have the same publicity given to his testimony as had been given to that taken yesterday.

Mr. Brady said he appeared this afternoon exclusively to attend to the examination of Mr. Field. Of course he had had no notice on his side of the case that there had been any conference between his honor and other eminent gentlemen as to what course should be taken. He had come to take charge of Mr. Field's case, and as regards whatever had happened, he took the whole responsibility of it. It belonged to him exclusively, — every question, every suggestion, — as it would also belong to him hereafter. He simply asked now

the inquiry indefinitely into periodical literature.* Nor were the lawyers in any way behind the judge. At one moment they would indulge in personal wrangling, and accuse each other of the grossest malpractice, and the next, favor each other with remarks upon manners, more pointed than delicate. All this time injunctions were flying about like hail-stones; but the crowning injunction of all was issued, in reference to the appointment of a receiver, by Judge Clerke, a colleague of Judge Barnard, at the time sitting as a member of the Court of Appeals at Albany. The Gilbert injunction had gone, it might have seemed, sufficiently far, in enjoining Barnard the individual, while distinctly disavowing all reference to him in his judicial functions. Judge Clerke made no such exception. He enjoined the individual and he enjoined

that Mr. Field have the opportunity to be heard in the matter publicly, as the other witnesses had been.

Mr. Clark, in reply, said that he would give Mr. Brady a promise that, if he lived, he (Mr. Brady) should have the opportunity of examining Mr. Field before a referee, if they could agree upon a gentleman who should be acceptable.

. . . . .

Judge Barnard, in reply to Mr. Field, who asked for the appointment of a referee, said that he had made the only order in the case he would make to-day, and that the matter would now stand adjourned until Thursday next, at three o'clock, P. M.

No affidavit of Mr. Field was ever taken, and the subject was allowed to drop.

* *Question by the Judge to Mr. Beblen.* Do you know whether James Fisk, Jr., and William H. Marston, went in a carriage to John J. Crane's house and offered him $50,000 to vacate this injunction; and did you hear from a director of the Erie Railroad that the Executive Committee had allowed that sum to be paid?

*Answer.* No one of the directors told me this; but I think I heard something of the kind. I can't tell from whom I heard it; there were numerous reports flying about at the time.

. . . . .

*Judge Barnard.* I have n't [addressing counsel] ruled the question out simply because I want to know whether I am fit to sit on the bench or not; if I have been engaged in a conspiracy, I am unfit to sit here.

Mr. Field said the question would open new evidence that had already been ruled out.

*Judge Barnard.* It was ruled out because I intend to have this "North American Review" [holding up the book] put in evidence, which contains an article about me, written by a clerk in your office. I intend to have this whole matter ferreted out.

the judge; he forbade his making any order appointing a receiver, and he forbade the clerks of his court from entering it if it were made, and the receiver from accepting it if it were entered. The signing of this extraordinary order by any judge in his senses admits of no explanation. The Erie counsel served it upon Judge Barnard as he sat upon the bench, and, having done so, withdrew from the court-room; whereupon the judge immediately proceeded to vacate the order, and to appoint a receiver. This appointment was then entered by a clerk, who had also been enjoined, and the receiver was himself enjoined as soon as he could be caught. Finally the maze had become so intricate, and the whole litigation so evidently endless and aimless, that by a sort of agreement of parties, Judge Ingraham, another colleague of Judge Barnard, issued a final injunction of universal application, as it were, and to be held inviolable by common consent, under which proceedings were stayed, pending an appeal. It was high time. Judges were becoming very shy of anything connected with the name of Erie, and Judge McCunn had, in a lofty tone, informed counsel that he preferred to subject himself to the liability of a fine of a thousand dollars rather than, by issuing a writ of *habeas corpus*, allow his court "to have anything to do with the scandal."

The result of this extraordinary litigation may be summed up in a few words. It had two branches: one, the appointment of a receiver of the proceeds of the hundred thousand shares of stock issued in violation of an injunction; the other, the processes against the persons of the directors for a contempt of court. As for the receiver, every dollar of the money this officer was intended to receive was well known to be in New Jersey, beyond his reach. Why one party cared to insist on the appointment, or why the other party objected to it, is not very apparent. Mr. Osgood, the son-in-law of Vanderbilt, was appointed, and immediately enjoined from acting; subsequently he resigned, when Mr. Peter B. Sweeney, the head of the Tammany ring, was appointed in his place, without notice to the other side. Of course he had

nothing to do, as there was nothing to be done, and so he was subsequently allowed by Judge Barnard $ 150,000 for his services. The contempt cases had even less result than that of the receivership. The settlement subsequently effected between the litigants seemed also to include the courts. The outraged majesty of the law, as represented in the person of Mr. Justice Barnard, was pacified, and everything was explained as having been said and done in a "Pickwickian sense"; so that, when the terms of peace had been arranged between the high contending parties, Barnard's roaring by degrees subsided, until he roared as gently as any sucking dove, and finally he ceased to roar at all. The penalty for violating an injunction in the manner described was fixed at the not unreasonable sum of ten dollars, except in the cases of Mr. Drew and certain of his more prominent associates; their contumacy his Honor held too gross to be estimated in money, and so they escaped without any punishment at all. Probably being as well read a lawyer as he was a dignified magistrate, Judge Barnard bore in mind, in imposing these penalties, that clause of the fundamental law which provides that "no excessive fines shall be imposed, or cruel or unusual punishments inflicted." The legal profession alone had cause to regret the cessation of this litigation; and, as the Erie counsel had $ 150,000 divided among them in fees, it may be presumed that even they were finally comforted. And all this took place in the court of that State over which the immortal Chancellor Kent had once presided. His great authority was still cited there, the halo which surrounds his name still shed a glory over the bench on which he had sat, and yet these, his immediate successors, could

> "On that high mountain cease to feed,
> And batten on this moor."

## II.

It is now necessary to return to the real field of operations, which had ceased on the morning of the 11th of March to be in the courts of law. As the arena widened the proceedings became more complicated and more difficult to trace, embracing as they did the legislatures of two States, neither of them famed for purity. In the first shock of the catastrophe it was actually believed that Commodore Vanderbilt contemplated a resort to open violence and acts of private war. There were intimations that a scheme had been matured for kidnapping certain of the Erie directors, including Mr. Drew, and bringing them by force within reach of Judge Barnard's process. It appeared that on the 16th of March some fifty individuals, subsequently described, in an affidavit filed for the special benefit of Mr. Justice Barnard, as "disorderly characters, commonly known as roughs," crossed by the Pavonia Ferry and took possession of the Erie depot. From their conversation and inquiries it was divined that they came intending to "capp" Mr. Drew, or, in plainer phraseology, to take him by force to New York; and that they expected to receive the sum of $50,000 as a reward for so doing. The exiles at once loudly charged Vanderbilt himself with originating this blundering scheme. They simulated intense alarm. From day to day new panics were started, until, on the 19th, Drew was secreted, a standing army was organized from the employees of the road, and a small navy equipped. The alarm spread through Jersey City; the militia was held in readiness; in the evening the stores were closed and the citizens began to arm; while a garrison of about one hundred and twenty-five men intrenched themselves around the directors, in their hotel. On the 21st there was another alarm, and the fears of an attack continued, with lengthening intervals of quiet, until the 31st, when the guard was at last withdrawn. It is impossible to suppose that Vanderbilt ever had any knowledge of this ridiculous episode or of its cause, ex-

cept through the press. A band of ruffians may have crossed the ferry, intending to kidnap Drew on speculation; but to suppose that the shrewd and energetic Commodore ever sent them to go gaping about a station, ignorant both of the person and the whereabouts of him they sought would be to impute to Vanderbilt at once a crime and a blunder. Such botching bears no trace of his clean handiwork.

The first serious effort of the Erie party was to intrench itself in New Jersey; and here it met with no opposition. A bill making the Erie Railway Company a corporation of New Jersey, with the same powers they enjoyed in New York, was hurried through the legislature in the space of two hours, and, after a little delay, signed by the Governor. The astonished citizens of the latter State saw their famous broad-gauge road thus metamorphosed before their eyes into a denizen of the kingdom of Camden and Amboy. Here was another dreadful hint to Wall Street. What further issues of stock might become legal under this charter, how the tenure of the present Board of Directors might be altered, what curious legal complications might arise, were questions more easily put than satisfactorily answered. The region of possibilities was considerably extended. The new act of incorporation, however, was but a precaution to secure for the directors of the Erie a retreat in case of need; the real field of conflict lay in the legislature of New York, and here Vanderbilt was first on the ground.

The corruption ingrained in the political system of New York City is supposed to have been steadily creeping into the legislature at Albany during several years past. The press has rung with charges of venality against members of this body; individuals have been pointed out as the recipients of large sums; men have certainly become rich during short terms in office; and, of all the rings which influence New York legislation, the railroad ring is currently supposed to be the most corrupt and corrupting. The mind of the unprejudiced inquirer, who honestly desires to ascertain the truth on this subject, will probably pass through several phases of be-

lief before settling into conviction. In the first place, he will be overwhelmed by the broad, sweeping charges advanced in the columns of the press by responsible editors and well-informed correspondents. He will read with astonishment that legislation is controlled by cliques and is openly bought and sold; that the lobby is but the legislative broker's board, where votes are daily quoted; that sheep and bullocks are not more regularly in the market at Smithfield than Assemblymen and Senators at Albany. Amazed by such statements, the inquirer becomes incredulous, and demands evidence in support of them. This is never forthcoming. Committees of investigation — one or two in a session — are regularly appointed, and their reports are invariably calculated to confound the existing confusion. These committees generally express a belief in the existence of corruption and an utter inability to find it out; against some notoriously venal brother legislator they enter a Scotch verdict of "not proven"; and, having thus far been very guarded in their language, they then launch forth into tremendous denunciations of an unbridled and irresponsible press. Here they have it all their own way, and, indeed, too often make out an excellent case. Meanwhile the seeker after truth leaves both correspondents and committees, and tries to reach a conclusion by other means. Public rumor he finds to be merely a reflection of the press, or itself the impalpable form which the press reflects. No conviction can be had on such evidence. He finds loose statements, unproved assertions, and unsustained charges, tending to produce general incredulity. Where so much more is alleged than is proved, nothing is finally believed; until individual corruption may be almost measured by an ostentatious disregard of public opinion. Passing through the phase of incredulity, the inquirer may at last resort to the private judgment of the best informed. Appealing to individuals in whose purity, judicial temper, and means of information he has entire confidence, he will probably find his conclusions as discouraging as they are inevitable. The weight of opinion and of evidence gradually becomes irresistible, until his mind

settles down into a sad belief that probably no representative bodies were ever more thoroughly venal, more shamelessly corrupt, or more hopelessly beyond the reach of public opinion, than are certain of those bodies which legislate for republican America in this latter half of the nineteenth century. Certainly, none of the developments which marked the Erie conflict in the New York legislature of 1868 would tend to throw doubts on this conclusion when once arrived at.

One favorite method of procedure at Albany is through the appointment of committees to investigate the affairs of wealthy corporations. The stock of some great company is manipulated till it fluctuates violently, as was the case with Pacific Mail in 1867. Forthwith some member of the Assembly rises and calls for a committee of investigation. The instant the game is afoot, a rush is made for positions on the committee. The proposer, of course, is a member, probably chairman. The advantages of the position are obvious. The committee constitutes a little temporary outside ring. If a member is corrupt, he has substantial advantages offered him to influence his action in regard to the report. If he is not open to bribery, he is nevertheless in possession of very valuable information, and an innocent little remark, casually let fall, may lead a son, a brother, or a loving cousin to make very judicious purchases of stock. Altogether, the position is one not to be avoided.

The investigation phase was the first which the Erie struggle assumed at Albany. During the early stages of the conflict the legislature had scented the carnage from afar. There was "money in it," and the struggle was watched with breathless interest. As early as the 5th of March the subject had been introduced into the State Senate, and an investigation into the circumstances of the company was called for. A committee of three was ordered, but the next day a senator, by name Mattoon, moved to increase the number to five, which was done, he himself being naturally one of the additional members. This committee had its first sitting on the 10th, at the very crisis of the great explosion. But before the investiga-

tion was entered upon, Mr. Mattoon thought it expedient to convince the contending parties of his own perfect impartiality and firm determination to hold in check the corrupt impulses of his associates. With this end in view, upon the 9th or the 10th he hurried down to New York, and visited West Street, where he had an interview with the leading Erie directors. He explained to them the corrupt motives which had led to the appointment of the committee, and how his sole object in obtaining an increase of the number had been to put himself in a position in which he might be able to prevent these evil practices and see fair play. Curiously enough, at the same interview he mentioned that his son was to be appointed an assistant sergeant-at-arms to aid in the investigation, and proved his disinterestedness by mentioning the fact that this son was to serve without pay. The labors of the committee continued until the 31st of March, and during that time Mr. Mattoon, and at least one other senator, pursued a course of private inquiry which involved further visits to Jersey City. Naturally enough, Mr. Drew and his associates took it into their heads that the man wanted to be bought, and even affirmed subsequently that, at one interview, he had in pretty broad terms offered himself for sale. It has not been distinctly stated in evidence by any one that an attempt was made on his purity or on that of his public-spirited son; and it is difficult to believe that one who came to New York so full of high purpose could have been sufficiently corrupted by metropolitan influences to receive bribes from both sides. Whether he did so or not his proceedings were terribly suggestive as regards legislative morality at Albany. Here was a senator, a member of a committee of investigation, rousing gamblers from their beds at early hours of the morning to hold interviews in the faro-bank parlor of the establishment, and to give "points" on which to operate upon the joint account. Even then the wretched creature could not even keep faith with his very "pals"; he wrote to them to "go it heavy" for Drew, and then himself went over to Vanderbilt, — he made agreements to share profits and then

submitted to exposure sooner than meet his part of the loss. A man more thoroughly, shamefacedly contemptible and corrupt, — a more perfect specimen of a legislator on sale haggling for his own price, could not well exist. In this case he cheated every one, including himself. Accident threw great opportunities in his way. On the 31st the draft of a proposed report, exonerating in great measure the Drew faction, was read to him by an associate, to which he not only made no objection, but was even understood to assent. On the same day another report was read in his presence, strongly denouncing the Drew faction, sustaining to the fullest extent the charges made against it, and characterizing its conduct as corrupt and disgraceful. Each report was signed by two of his associates, and Mr. Mattoon found himself in the position of holding the balance of power; whichever report he signed would be the report of the committee. He expressed a desire to think the matter over. It is natural to suppose that, in his eagerness to gain information privately, Mr. Mattoon had not confined his unofficial visits to the Drew camp. In any case his mind was in a state of painful suspense. Finally, after arranging in consultation on Tuesday for a report favoring the Drew party, on Wednesday he signed a report strongly denouncing it, and by doing so settled the action of the committee. Mr. Jay Gould must have been acquainted with the circumstances of the case, and evidently supposed that Mr. Mattoon was "fixed," since he subsequently declared he was "astounded" when he heard that Mr. Mattoon had signed this report. The committee, however, with their patriotic sergeant-at-arms, whose services, by the way, cost the State but a hundred dollars, desisted at length from their labors, the result of which was one more point gained by Commodore Vanderbilt.

Indeed, Vanderbilt had thus far as much outgeneralled Drew in the manufacture of public opinion as Drew had outgeneralled Vanderbilt in the manufacture of Erie stock. His whole scheme was one of monopoly, which was opposed to every interest of the city and State of New York, yet into the

support of this scheme he had brought all the leading papers of New York City, with a single exception. Now again he seemed to have it all his own way in the legislature, and the tide ran strongly against the exiles of Erie. The report of the investigation committee was signed on April 1st, and may be considered as marking the high-water point of Vanderbilt's success. Hitherto the Albany interests of the exiles had been confided to mere agents, and had not prospered; but, when fairly roused by a sense of danger, the Drew party showed at least as close a familiarity with the tactics of Albany as with those of Wall Street. The moment they felt themselves settled at Jersey City they had gone to work to excite a popular sympathy in their own behalf. The cry of monopoly was a sure card in their hands. They cared no more for the actual welfare of commerce, involved in railroad competition, than they did for the real interests of the Erie Railway; but they judged truly that there was no limit to the extent to which the public might be imposed upon. An active competition with the Vanderbilt roads, by land and water, was inaugurated; fares and freights on the Erie were reduced on an average by one third; sounding proclamations were issued; "interviewers" from the press returned rejoicing from Taylor's Hotel to New York City, and the Jersey shore quaked under the clatter of this Chinese battle. The influence of these tactics made itself felt at once. By the middle of March memorials against monopoly began to flow in at Albany.

While popular sympathy was thus roused by the bribe of active competition, a bill was introduced into the Assembly, in the Erie interest, legalizing the recent issue of new stock, declaring and regulating the power of issuing convertible bonds, providing for a broad-gauge connection with Chicago and the guaranty of the bonds of the Boston, Hartford, & Erie, and finally forbidding, in so far as any legislation could forbid, the consolidation of the Central and the Erie in the hands of Vanderbilt. This bill was referred to the Committee on Railroads on the 13th of March. On the 20th a public hearing was begun, and the committee proceeded to take

evidence, aided by a long array of opposing counsel, most of whom had figured in the proceedings in the courts of law. In a few days the bill was adversely reported upon, and the report adopted in the Assembly by the decisive vote of eighty-three to thirty-two. This was upon the 27th of March. The hint was a broad one; the exiles must give closer attention to their interests. So soon as the news of this adverse action reached Jersey City, it was decided that Mr. Jay Gould should brave the terrors of the law, and personally superintend matters at Albany. Neither Mr. Drew nor his associates desired to become permanent residents of Jersey City; nor did they wish to return to New York as criminals on their way to jail. Mr. Gould was to pave the way to a different return by causing the recent issue of convertible bonds to be legalized. That once done, Commodore Vanderbilt was not the man to wage an unavailing war, and a compromise, in which Barnard and his processes of contempt would be thrown in as a make-weight, could easily be effected. A rumor was therefore started that Mr. Gould was to leave for Ohio, supplied with the necessary authority and funds to press vigorously to completion the eighty miles of broad-gauge track between Akron and Toledo, which would open to the Erie the much-coveted connection with Chicago. Having hung out this false light, Mr. Jay Gould went on his mission, the president of the company having some time previously drawn half a million of dollars out of the overflowing Erie treasury.

This mission was by no means unattended by difficulties. In the first place, Judge Barnard's processes for contempt seemed to threaten the liberty of Mr. Gould's person. He left Jersey City and arrived at Albany on the 30th day of March, three days after the defeat of the Erie bill, and two days before Mr. Mattoon had made up his mind as to which report he would sign. Naturally his opponents were well satisfied with the present aspect of affairs, and saw no benefit likely to arise from Mr. Gould's presence in Albany. The day after his arrival, therefore, he was arrested, on the writ issued against him for contempt of court, and held to bail in half a million

of dollars for his appearance in New York on the following Saturday. He was immediately bailed of course, and for the next few days devoted himself assiduously to the business he had in hand. On Saturday he appeared before Judge Barnard, and was duly put in charge of the sheriff to answer certain interrogatories. It would seem to have been perfectly easy for him to give the necessary bail, and to return from Barnard's presence at once to Albany; but the simple method seems never to have been resorted to throughout these complications: nothing was ever done without the interposition of a writ and the assistance of a crowd of counsel. In this case Judge Barrett of the Common Pleas was appealed to, who issued a writ of *habeas corpus*, by virtue of which Mr. Gould was taken out of the hands of the sheriff and again brought into court. Of course the hearing of the case was deferred, and it was equally a matter of course that Mr. Gould was bent on returning at once to his field of labor. The officer to whose care Mr. Gould was intrusted was especially warned by the court, in Mr. Gould's presence, that he was not to allow his charge to go out of his sight. This difficulty was easily surmounted. Mr. Gould went by an early train to Albany, taking the officer with him in the capacity of a travelling companion. Once in Albany he was naturally taken ill, — not too ill to go to the Capitol in the midst of a snow-storm, but much too ill to think of returning to New York. On the 10th the trusty official and travelling companion signified to Mr. Gould that his presence was much desired before Judge Barrett, and intimated an intention of carrying him back to New York. Mr. Gould then pleaded the delicate condition of his health, and wholly declined to undergo the hardships of the proposed journey. Whereupon the officer, stimulated, as was alleged, by Gould's opponents, returned alone to New York, and reported his charge to the court as a runaway. A new spectacle of judicial indignation ensued, and a new process for contempt seemed imminent. Of course nothing came of it. A few affidavits from Albany pacified the indignant Barrett. The application for a *habeas corpus* was discharged, and Mr. Gould

was theoretically returned into the custody of the sheriff. Thereupon the required security for his appearance when needed was given; and meanwhile, pending the recovery of his health, he assiduously devoted the tedious hours of convalescence to the task of cultivating a thorough understanding between himself and the members of the legislature.

A strange legislative episode occurred at this time, which for a day or two threatened to thwart Mr. Gould's operations, but in the end materially facilitated them. All through March the usual sensational charges had been flying through the press in relation to the buying of votes on the pending Erie measures. These were as vague and as difficult to sustain as usual, and it was very important that no indiscreet friend of legislative purity should blunder out charges which could be triumphantly refuted. On the 1st of April, however, the second day after Mr. Gould appeared on the ground, a quiet country member named Glenn, remarkable for nothing but his advanced years and white hair, suddenly created an intense sensation by rising in his place in the Assembly and excitedly declaring that he had just been offered money for his vote on the Erie Bill. He then sent up to the Speaker charges in writing, to the effect that the recent report on the bill in question was bought, that members of the House were engaged in purchasing votes, that reports of committees were habitually sold, and ended by charging "corruption, deep, dark, and damning on a portion of the House," of which he felt "degraded in being a member." A committee of investigation was, of course, appointed, and the press congratulated the public that at last specific charges had been advanced from a responsible quarter. On the 9th Mr. Glenn followed up the attack by charging, again in writing, that one member of the committee of investigation, whose name he gave, was the very member who had offered him money for his vote. Mr. Frear, the member in question, at once resigned his place upon the committee, and demanded an investigation. Then it turned out that the simple old gentleman, between his desire for notoriety and his eagerness to expose corruption, had been

made the victim of a cruel joke. Some waggish colleagues had pointed out to him an itinerant Jew, who haunted the lobby and sold spectacles, as an agent of the fifth estate. From him the old gentleman had, after some clumsy angling and many leading questions, procured what he supposed to be an offer of money for his vote, which, by a ludicrous misunderstanding, managed by his humorous colleagues, was made to appear in his eyes as having received Mr. Frear's indorsement. Mr. Glenn's charges ended, therefore, in a ridiculous fiasco, and in a tremendous outburst of offended legislative virtue. The committee reported on the 10th ; every one was exonerated ; Mr. Glenn was brought to the bar and censured, and the next day he resigned. As for the astonished pedler, he was banished from the lobby, imprisoned, prosecuted, and forgotten. The display of indignation on the part of Mr. Glenn's brother legislators was, in view of the manifest absurdity of the whole affair, somewhat superfluous and somewhat suspicious ; but one such false accusation protects a multitude of real sins. The trade of censor of morals fell into disrepute at Albany ; and, under the shadow of this parody upon exposures of corruption, Mr. Gould was at liberty to devote himself to serious business without fear of interruption.

The full and true history of this legislative campaign will never be known. If the official reports of investigating committees are to be believed, Mr. Gould at about this time underwent a curious psychological metamorphosis, and suddenly became the veriest simpleton in money matters that ever fell into the hands of happy sharpers. Cunning lobby members had but to pretend to an influence over legislative minds, which every one knew they did not possess, to draw unlimited amounts from this verdant *habitué* of Wall Street. It seemed strange that he could have lived so long and learned so little. He dealt in large sums. He gave to one man, in whom he said "he did not take much stock," the sum of $ 5,000, "just to smooth him over." This man had just before received $ 5,000 of Erie money from another agent of the company. It would, therefore, be interesting to know

what sums Mr. Gould paid to those individuals in whom he did "take much stock." Another individual is reported to have received $ 100,000 from one side, "to influence legislation," and to have subsequently received $ 70,000 from the other side to disappear with the money; which he accordingly did, and thereafter became a gentleman of elegant leisure. One senator was openly charged in the columns of the press with receiving a bribe of $ 20,000 from one side, and a second bribe of $ 15,000 from the other; but Mr. Gould's foggy mental condition only enabled him to be "perfectly astounded" at the action of this senator, though he knew nothing of any such transactions. Other senators were blessed with a sudden accession of wealth, but in no case was there any jot or tittle of proof of bribery. Mr. Gould's rooms at the Develin House overflowed with a joyous company, and his checks were numerous and heavy; but why he signed them, or what became of them, he seemed to know less than any man in Albany. This strange and expensive hallucination lasted until about the middle of April, when Mr. Gould was happily restored to his normal condition of a shrewd, acute, energetic man of business; nor is it known that he has since experienced any relapse into financial idiotcy.

About the period of Mr. Gould's arrival in Albany the tide turned, and soon began to flow strongly in favor of Erie and against Vanderbilt. How much of this was due to the skilful manipulations of Gould, and how much to the rising popular feeling against the practical consolidation of competing lines, cannot be decided. The popular protests did indeed pour in by scores, but then again the Erie secret-service money poured out like water. Yet Mr. Gould's task was sufficiently difficult. After the adverse report of the Senate committee, and the decisive defeat of the bill introduced into the Assembly, any favorable legislation seemed almost hopeless. Both Houses were committed. Vanderbilt had but to prevent action, — to keep things where they were, and the return of his opponents to New York was impracticable, unless with his consent; he appeared, in fact, to be absolute master of the

situation. It seemed almost impossible to introduce a bill in the face of his great influence, and to navigate it through the many stages of legislative action and executive approval, without somewhere giving him an opportunity to defeat it. This was the task Gould had before him, and he accomplished it. On the 13th of April a bill, which met the approval of the Erie party, and which Judge Barnard subsequently compared not inaptly to a bill legalizing counterfeit money, was taken up in the Senate; for some days it was warmly debated, and on the 18th was passed by the decisive vote of seventeen to twelve. Senator Mattoon had not listened to the debate in vain. Perhaps his reason was convinced, or perhaps he had sold out new "points" and was again cheating himself or somebody else; at any rate, that thrifty senator was found voting with the majority. The bill practically legalized the recent issues of bonds, but made it a felony to use the proceeds of the sale of these bonds except for completing, furthering, and operating the road. The guaranty of the bonds of connecting roads was authorized, all contracts for consolidation or division of receipts between the Erie and the Vanderbilt roads were forbidden, and a clumsy provision was enacted that no stockholder, director, or officer in one of the Vanderbilt roads should be an officer or director in the Erie, and *vice versa*. The bill was, in fact, an amended copy of the one voted down so decisively in the Assembly a few days before, and it was in this body that the tug of war was expected to come.

The lobby was now full of animation; fabulous stories were told of the amounts which the contending parties were willing to expend; never before had the market quotations of votes and influence stood so high. The wealth of Vanderbilt seemed pitted against the Erie treasury, and the vultures flocked to Albany from every part of the State. Suddenly, at the very last moment, and even while special trains were bringing up fresh contestants to take part in the fray, a rumor ran through Albany as of some great public disaster, spreading panic and terror through hotel and corridor. The ob-

server was reminded of the dark days of the war, when tidings came of some great defeat, as that on the Chickahominy or at Fredericksburg. In a moment the lobby was smitten with despair, and the cheeks of the legislators were blanched, for it was reported that Vanderbilt had withdrawn his opposition to the bill. The report was true. Either the Commodore had counted the cost and judged it excessive, or he despaired of the result. At any rate, he had yielded in advance. In a few moments the long struggle was over, and that bill which, in an unamended form, had but a few days before been thrown out of the Assembly by a vote of eighty-three to thirty-two, now passed it by a vote of one hundred and one to six, and was sent to the Governor for his signature. Then the wrath of the disappointed members turned on Vanderbilt. Decency was forgotten in a frenzied sense of disappointed avarice. That same night the *pro rata* freight bill, and a bill compelling the sale of through tickets by competing lines, were hurriedly passed, simply because they were thought hurtful to Vanderbilt; and the docket was ransacked in search of other measures, calculated to injure or annoy him. An adjournment, however, brought reflection, and subsequently, on this subject, the legislature stultified itself no more.

The bill had passed the legislature; would it receive the Executive signature? Here was the last stage of danger. For some time doubts were entertained on this point, and the last real conflict between the opposing interests took place in the Executive Chamber at Albany. There, on the afternoon of the 21st of April, Commodore Vanderbilt's counsel appeared before Governor Fenton, and urged upon him their reasons why the bill should be returned by him to the Senate without his signature. The arguments were patiently listened to, but, when they had closed, the Executive signature placed the seal of success upon Mr. Gould's labors at Albany. Even here the voice of calumny was not silent. As if this remarkable controversy was destined to leave a dark blot of suspicion upon every department of the civil service of New York,

there were not wanting those who charged the Executive itself with the crowning act in this history of corruption. The very sum pretended to have been paid was named ; the broker of Executive action was pointed out, and the number of minutes was specified which should intervene between the payment of the bribe and the signing of the law.*

Practically, the conflict was now over, and the period of negotiation had already begun. The combat in the courts was indeed kept up until far into May, for the angry passions of the lawyers and of the judges required time in which to wear themselves out. Day after day the columns of the press revealed fresh scandals to the astonished public, which at last grew indifferent to such revelations. Beneath all the wrangling of the courts, however, while the popular attention was distracted by the clatter of lawyers' tongues, the leaders in the controversy were quietly approaching a settlement. In the early days of his exile Mr. Drew had been more depressed in spirit, more vacillating in counsel, than his younger and more robust associates. The publicity and excitement which had sustained and even amused them had wearied and annoyed the old man. His mind had been oppressed with saucy doubts and tormented by officious advisers. Stronger wills than his were bearing him along with them ; and though, perhaps, not more scrupulous than those about him, he was certainly less bold ; their reckless daring shocked his more subtle and timid nature. He missed also his home comforts ; he felt himself a prisoner in everything but in name ; he knew that he was distrusted, and his every action watched by associates of whom he even stood in physical fear, who hardly allowed him to see his brokers alone, and did not respect the sanctity of his telegrams. After the first week or two, and as affairs began to assume a less untoward aspect, his spirits revived, and he soon began to make secret advances towards his angry opponent.

* It is but justice to Governor Fenton to say, that, though this charge was boldly advanced by respectable journals of his own party, it cannot be considered as sustained by the evidence. The testimony on the point will be found in the report of Senator Hale's investigating committee. Documents (Senate), 1869, No. 52, pp. 146 - 148, 151 - 155.

The hostilities of the Stock Exchange are proverbially short-lived. A broker skilled in the ways of his kind gave it as his opinion, in one of these proceedings, that five minutes was the utmost period during which it was safe to count on the enmities or alliances of leading operators. Early in April Mr. Drew took advantage of that blessed immunity from arrest which the Sabbath confers on the hunted of the law, to revisit the familiar scenes across the river. His visit soon resulted in conferences between himself and Vanderbilt, and these conferences naturally led to overtures of peace. Though the tide was turning against the great railroad king, though an uncontrollable popular feeling was fast bearing down his schemes of monopoly, yet he was by no means beaten or subdued. His plans, however, had evidently failed for the present; as he expressed himself, he could easily enough buy up the Erie Railway, but he could not buy up the printing-press. It was now clearly his interest to abandon his late line of attack, and to bide his time patiently, or to possess himself of his prey by some other method. The wishes of all parties, therefore, were fixed on a settlement, and no one was disposed to stand out except in order to obtain better terms. The interests, however, were multifarious. There were four parties to be taken care of, and the depleted treasury of the Erie Railway was doomed to suffer.

The details of this masterpiece of Wall Street diplomacy have never come to light, but Mr. Drew's visits to New York became more frequent and less guarded; by the middle of April he had appeared in Broad Street on a week-day, undisturbed by fears of arrest, and soon rumors began to spread of misunderstandings between himself and his brother exiles. It was said that his continual absences alarmed them, that they distrusted him, that his terms of settlement were not theirs. It was even asserted that his orders on the treasury were no longer honored, and that he had, in fact, ceased to be a power in Erie. Whatever truth there may have been in these rumors, it was very evident his associates had no inclination to trust themselves within the reach of the New York

courts until a definitive treaty, satisfactory to themselves, was signed and sealed. This probably took place about the 25th of April; for on that day the Erie camp at "Fort Taylor," as their uninviting hotel had been dubbed, was broken up, the President and one of the Executive Committee took steamer for Boston, and the other directors appeared before Judge Barnard, prepared to purge themselves of their contempt.

Though the details of negotiation have never been divulged, yet it was clear enough what three of the four parties desired. Commodore Vanderbilt wished to be relieved of the vast amount of stock with which he was loaded, and his friends Work and Schell, in whose names the battle had been fought, must be protected. Mr. Drew desired to settle his entangled accounts as treasurer, and to obtain a release in full, which might be pleaded in future complications. Mr. Eldridge and his Boston friends were sufficiently anxious to be relieved of the elephant they found on their hands, in the Erie Railway of New York, and to be at leisure to devote the spoils of their victim to the development of their New England enterprise. Messrs. Gould and Fisk alone were unprovided for, and they alone presented themselves as obstacles to be overcome by railroad diplomacy.

At last, upon the 2d of July, Mr. Eldridge formally announced to the Board of Directors that the terms of peace had been agreed upon. Commodore Vanderbilt was, in the first place, provided for. He was to be relieved of fifty thousand shares of Erie stock at 70, receiving therefor $2,500,000 in cash, and $1,250,000 in bonds of the Boston, Hartford, & Erie at 80. He was also to receive a further sum of $1,000,000 outright, as a consideration for the privilege the Erie road thus purchased of calling upon him for his remaining fifty thousand shares at 70 at any time within four months. He was also to have two seats in the Board of Directors, and all suits were to be dismissed and offences condoned. The sum of $429,250 was fixed upon as a proper amount to assuage the sense of wrong from which his two friends Work and Schell had suffered, and to efface from their memories all

recollection of the unfortunate "pool" of the previous December. Why the owners of the Erie Railway should have paid this indemnity of $4,000,000 is not very clear. The operations were apparently outside of the business of a railway company, and no more connected with the stockholders of the Erie than were the butchers' bills of the individual directors.

While Vanderbilt and his friends were thus provided for, Mr. Drew was to be left in undisturbed enjoyment of the fruits of his recent operations, but was to pay into the treasury $540,000 and interest, in full discharge of all claims and causes of action which the Erie Company might have against him. The Boston party, as represented by Mr. Eldridge, was to be relieved of $5,000,000 of their Boston, Hartford, & Erie bonds, for which they were to receive $4,000,000 of Erie acceptances. None of these parties, therefore, had anything to complain of, whatever might be the sensations of the real owners of the railway. A total amount of some $9,000,000 in cash was drawn from the treasury in fulfilment of this *settlement*, as the persons concerned were pleased to term this remarkable disposition of property intrusted to their care.

Messrs. Gould and Fisk still remained to be taken care of, and to them their associates left — the Erie Railway. These gentlemen subsequently maintained that they had vehemently opposed this settlement, and had denounced it in the secret councils as a fraud and a robbery. Mr. Fisk was peculiarly outspoken in relation to it, and declared himself "thunderstruck and dumbfounded" that his brother directors whom he had supposed respectable men should have had anything to do with any such proceeding. A small portion of this statement is not wholly improbable. The astonishment at the turpitude of his fellow-officials was a little unnecessary in one who had already seen "more robbery" during the year of his connection with the Erie Railway than he had "ever seen before in the same space of time," — so much of it indeed that he dated his "gray hairs" from that 7th of October which saw his election to the board. That Mr. Fisk and Mr. Gould were extremely indignant at a partition of plunder from which they

were excluded is, however, very certain. The rind of the orange is not generally considered the richest part of the fruit; a corporation on the verge of bankruptcy is less coveted, even by operators in Wall Street, than one rich in valuable assets. Probably at this time these gentlemen seriously debated the expediency of resorting again to a war of injunctions, and carefully kept open a way for doing so; however this may have been, they seem finally to have concluded that there was yet plunder left in the poor old hulk, and so, after four stormy interviews, all opposition was at last withdrawn and the definitive treaty was finally signed.* Mr. Eldridge thereupon counted out his bonds and received his acceptances, which latter were cashed at once to close up the transaction, and at once he resigned his positions as director and president. The Boston raiders then retired, heavy with spoil, into their own North country, and there proceeded to build up an Erie influence for New England, in which task they labored with assiduity and success. Gradually they here introduced the more highly developed civilization of the land of their temporary adoption and boldly attempted to make good their private losses from the public treasury. A more barefaced scheme of plunder never was devised, and yet the executive veto alone stood between it and success. These, however, were the

* The account given of this affair by Mr. Fisk from the witness stand on a subsequent occasion was characteristic: "Finally about twelve o'clock a paper was passed round and we signed it; I don't know what it contained; I did n't read it; I don't think I noticed a word of it; I remember the space for the names was greater than that covered by the writing; my impression is that I took my hat and left at once in disgust; I told Gould we had sold ourselves to the Devil; I presume that was not the only document signed; I remember seeing Mr. White, the cashier, come in with the check-book, and I said to him, 'You are bearing in the remains of this corporation to be put in Vanderbilt's tomb.' No; I did n't know the contents of the paper which I signed, and I have always been glad that I did n't; I have thought of it a thousand times; I don't know what other documents I signed; I signed everything that was put before me; after once the Devil had hold of me I kept on signing; did n't read any of them and have no idea what they were; I don't know how many I signed; I kept no count after the first one: I went with the robbers then and I have been with them ever since; my impression is that after the signing I left at once; I don't know whether we sat down or not; we did n't have anything to eat, I know."

events of another year and unconnected with this narrative, from which these characters in the Erie management henceforth disappear. For the rest it is only necessary to say that Mr. Vanderbilt, relieved of his heavy load of its stock, apparently ceased to concern himself with Erie; while Daniel Drew, released from the anxieties of office, assumed for a space the novel character of a looker-on in Wall Street.

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## III.

Thus, in the early days of July, Messrs. Fisk and Gould found themselves beginning life, as it were, in absolute control of the Erie Railway, but with an empty treasury and a doubtful reputation. Outwardly things did not look unpromising. The legal complications were settled, and the fearful load imposed by the settlement upon the already overburdened resources of the road was not, of course, imparted to the public. It is unnecessary to add that the "outside" holders of the stock were, in the counsels of the managers, included in that public the inquiries of which in regard to the affairs of the company were looked upon by the ring in control as downright impertinence. A calm — deceitful indeed, but yet a calm — succeeded the severe agitations of the money market. All through the month of July money was easy and ruled at three or four per cent; Erie was consequently high, and was quoted at about seventy, which enabled the company to dispose without loss of the Vanderbilt stock. It may well be believed that Messrs. Fisk and Gould could not have regarded their empty treasury, just depleted to the extent of nine millions, — trust funds misapplied by directors in the processes of stock-gambling, — without serious question as to their ability to save the road from bankruptcy. The October election was approaching, Vanderbilt was still a threatening element in the future, and new combinations might arise.

Millions were necessary, and must at once be forthcoming. The new officials were, however, men of resource, and were not men of many scruples. The money must be raised, and recent experience indicated a method of raising it. Their policy, freed from the influence of Drew's vacillating, treacherous, and withal timid nature, could now be bold and direct. The pretence of resistance to monopoly would always serve them, as it had served them before, as a plausible and popular cry. Above all, their councils were now free from interlopers and spies; for the first act of Messrs. Gould and Fisk had been to do away with the old board of auditors, and to concentrate all power in their own hands as president, treasurer, and controller. Fortunately for them it was midsummer, and the receipts of the road were very heavy, supplying them with large sums of ready money;* most fortunately for them, also, a strange infatuation at this time took possession of the English mind.

* It will be remembered that the act of 21st April, legalizing the issue of bonds, made it a felony to devote the proceeds to any purpose except equipping, constructing, and operating the road. Mr. Gould's explanation of the effect he gave to this clause is not only amusing as a piece of impudence, but extremely suggestive as regards the efficacy of legislation. Mr. Gould, be it remembered, procured the passage of the law, and Mr. Gould thus explains to the railroad committee of the legislature the force he gave to its provisions.

*Mr. Gould.* . . . . The law is, that you can only use the money realized on these bonds for the purpose of equipping, constructing, and operating the road, and therefore I had to use the earnings of the road to meet these large liabilities, which had been authorized by the board (the Eldridge-Vanderbilt settlement), and use the money realized from the bonds to equip, construct, and operate the road. . . . .

*Question by Mr. Waterman.* In fact these twenty million of bonds were issued to meet these obligations, and not for the purpose of maintaining, operating, and constructing the road?

*Answer.* No, sir; I used the earnings of the road to meet these obligations. . . . . We had to live up to the letter of the law, and use the money realized from the bonds for the purpose of operating, constructing, and equipping the road.

Q. But your pressing need of money was not for the purpose of operating the road, but for the purpose of meeting these obligations?

*A.* Yes, sir.

*Q.* The amount of money you sought to raise was the amount of these obligations?

*A.* Yes, sir.

Shrewd as the British capitalist proverbially is, his judgment in regard to American investments has been singularly fallible. When our national bonds went begging at a discount of sixty per cent, he transmitted them to Germany and refused to touch them himself. At the very same time a class of railroad securities — such as those of this very Erie Railway, or, to cite a yet stronger case, those of the Atlantic & Great Western road — was gradually absorbed in London as an honest investment long after these securities had "gone into the street" in America. It was this strange fatuity which did much to bring on the crash of May, 1866. Even that did not seem to teach wisdom to the British bankers, who had apparently passed from the extreme of caution to the extreme of confidence. They now, after all the exposures of the preceding months, rushed into Erie, apparently because it seemed cheap, and the prices in New York were sustained by the steady demand for stock on foreign account. Not only did this curious infatuation, involving purchases to the extent of a hundred thousand shares, cover up the operations of the new ring, but, at a later period, the date of the possible return of this stock to Wall Street was the hinge on which the success of its culminating plot was made to turn.

The appearance of calm lasted but about thirty days. Early in August it was evident that something was going on. Erie suddenly fell ten per cent; in a few days more it experienced a further fall of seven per cent, touching 44 by the 19th of the month, upon which day, to the astonishment of Wall Street, the transfer-books of the company were closed preparatory to the annual election. As this election was not to take place until the 13th of October, and as the books had thus been closed thirty days in advance of the usual time, it looked very much as though the managers were satisfied with the present disposition of the stock, and meant, by keeping it where it was, to preclude any such unpleasantness as an opposition ticket. The courts and a renewed war of injunctions were of course open to any contestants, including Commodore Vanderbilt, who might desire to avail themselves of

them; probably, however, the memory of recent struggles was too fresh to permit any one to embark on those treacherous waters. At any rate, nothing of the sort was attempted. The election took place at the usual time, and the ring in control voted itself, without opposition, into a new lease of power. Two new names had meanwhile appeared in the list of Erie directors, — those of Peter B. Sweeney and William M. Tweed, the two most prominent leaders of that notorious ring which controls the proletariat of New York City and governs the politics of the State. The alliance was an ominous one, for the construction of the new board can be stated in few words, and calls for no comment. It consisted of the Erie ring and the Tammany ring, brought together in close political and financial union; and, for the rest, a working majority of supple tools and a hopeless minority of respectable figure-heads. This formidable combination shot out its feelers far and wide: it wielded the influence of a great corporation with a capital of a hundred millions; it controlled the politics of the first city of the New World; it sent its representatives to the Senate of the State, and numbered among its agents the judges of the courts. Compact, disciplined, and reckless, it knew its own power and would not scruple to use it.

It was now the month of October, and the harvest had been gathered. The ring and its allies determined to reap their harvest also, and that harvest was to be nothing less than a contribution levied, not only upon Wall Street and New York, but upon all the immense interests, commercial and financial, which radiate from New York all over the country. Like the Cæsar of old, they issued their edict that all the world should be taxed. The process was not novel, but it was effective. A monetary stringency may be looked for in New York at certain seasons of every year. It is generally most severe in the autumn months, when the crops have to be moved, and the currency is drained steadily away from the financial centre towards the extremities of the system. The method by which an artificial stringency is produced is thus explained in a

recent report of the Comptroller of the Currency: "It is scarcely possible to avoid the inference that nearly one half of the available resources of the national banks in the city of New York are used in the operations of the stock and gold exchange; that they are loaned upon the security of stocks which are bought and sold largely on speculation, and which are manipulated by cliques and combinations, according as the bulls or bears are for the moment in the ascendency. . . . . Taking advantage of an active demand for money to move the crops West and South, shrewd operators form their combination to depress the market by 'locking up' money, — withdrawing all they can control or borrow from the common fund; money becomes scarce, the rate of interest advances, and stocks decline. The legitimate demand for money continues; and, fearful of trenching on their reserve, the banks are strained for means. They dare not call in their demand loans, for that would compel their customers to sell securities on a falling market, which would make matters worse. Habitually lending their means to the utmost limit of prudence, and their credit much beyond that limit, to brokers and speculators, they are powerless to afford relief; — their customers by the force of circumstances become their masters. The banks cannot hold back or withdraw from the dilemma in which their mode of doing business has placed them. They must carry the load to save their margins. A panic which should greatly reduce the price of securities would occasion serious, if not fatal, results to the banks most extensively engaged in such operations, and would produce a feeling of insecurity which would be very dangerous to the entire banking interest of the country." *

All this machinery was now put in motion; the banks and their customers were forced into the false position described, and towards the end of October it had become perfectly notorious in Wall Street that large new issues of Erie had been made, and that these new issues were intimately connected with the sharp stringency then existing in the money market.

* Finance Report, 1868, pp. 20, 21.

It was at last determined to investigate the matter, and upon the 27th of the month a committee of three was appointed by the Stock Exchange to wait upon the officers of the corporation with the view of procuring such information as they might be willing to impart. The committee called on Mr. Gould and stated the object of their visit. In reply to their inquiries Mr. Gould informed them that Erie convertible bonds for ten millions of dollars had been issued, half of which had already been, and the rest of which would be, converted into stock; that the money had been devoted to the purchase of Boston, Hartford, & Erie bonds for five millions, and also — of course — to payments for steel rails. The committee desired to know if any further issue of stock was in contemplation, but were obliged to rest satisfied with a calm assurance that no new issue was just then contemplated except "in certain contingencies"; from which enigmatical utterances Wall Street was left to infer that the exigencies of Messrs. Gould and Fisk were elements not to be omitted from any calculations as to the future of Erie and the money market. The amount of these issues of new stock was, of course, soon whispered in a general way; but it was not till months afterwards that a sworn statement of the secretary of the Erie Railway revealed the fact that the stock of the corporation had been increased from $34,265,300 on the 1st of July, 1868, the date when Drew and his associates had left it, to $57,766,300 on the 24th of October of the same year, or by two hundred and thirty-five thousand shares in four months.* This, too, had been done without consultation with the board of directors, and with no other authority than that conferred by the ambiguous resolution of February 19. Under that resolution the stock of the company had now been increased

* In April, 1871, although the stock was then nominally registered, a further secret issue was made by which some $600,000 in cash was realized on $3,000,000 of stock. Periodical issues had then carried the gross amount up to the neighborhood of $86,500,000; or from a total of 250,000 shares, when the management changed at the election of October 17, 1867, to 865,000 shares within four years. Apparently Mr. Fisk was more correct than usual in his statement, when he remarked, that, having once joined the robbers, "he had been with them ever since."

one hundred and thirty-eight per cent in eight months. Such a process of inflation may, perhaps, be justly considered the most extraordinary feat of financial legerdemain which history has yet recorded.

Now, however, when the committee of the Stock Exchange had returned to those who sent them, the mask was thrown off, and operations were conducted with vigor and determination. New issues of Erie were continually forced upon the market until the stock fell to 35; greenbacks were locked up in the vaults of the banks, until the unexampled sum of twelve millions was withdrawn from circulation; the prices of securities and merchandise declined; trade and the autumnal movement of the crops were brought almost to a stand-still; and loans became more and more difficult to negotiate, until at length even one and a half per cent a day was paid for carrying stocks. Behind all this it was notorious that some one was pulling the wires, the slightest touch upon which sent a quiver through every nerve of the great financial organism, and wrung private gain from public agony. The strange proceeding reminds one of those scenes in the chambers of the Inquisition where the judges calmly put their victim to the question, until his spasms warned them not to exceed the limits of human endurance. At last the public distress reached the ears of the government at Washington. While it was simply the gamblers of Wall Street who were tearing each other, their clamor for relief excited little sympathy. When, however, the suffering had extended through all the legitimate business circles of the country, — when the scarcity of money threatened to cut off the winter food of the poor, to rob the farmer of the fruits of his toil, and to bring ruin upon half the debtor class of the community, — then even Mr. McCulloch, pledged as he was to contraction, was moved to interfere. The very revenues of the government were affected by the operations of gamblers. They were therefore informed that, if necessary, fifty millions of additional currency would be forthcoming to the relief of the community, and then, and not till then, the screws were

The harvest of the speculators, however, was still but half gathered. Hitherto the combination had operated for a fall. Now was the moment to change the tactics and take advantage of the rise. The time was calculated to a nicety. The London infatuation had wonderfully continued, and as fast as certificates of stock were issued they seemed to take wings across the Atlantic. Yet there was a limit even to English credulity, and in November it became evident that the agents of foreign houses were selling their stock to arrive. The price was about 40; the certificates might be expected by the steamer of the 23d. Instantly the combination changed front. As before they had depressed the market, they now ran it up, and, almost as if by magic, the stock, which had been heavy at 40, astonished every one by shooting up to 50. New developments were evidently at hand.

At this point Mr. Daniel Drew once more made his appearance on the stage. As was very natural, he had soon wearied of the sameness of his part as a mere looker-on in Wall Street, and had relapsed into his old habits. He was no longer treasurer of the Erie, and could not therefore invite the public to the game, while he himself with sombre piety shook the loaded dice. But it had become with him a second nature to operate in Erie, and once more he was deep in its movements. At first he had combined with his old friends, the present directors, in their "locking-up" conspiracy. He had agreed to assist them to the extent of four millions. The vacillating, timid nature of the man, however, could not keep pace with his more daring and determined associates, and, after embarking a million, becoming alarmed at the success of the joint operations and the remonstrances of those who were threatened with ruin, he withdrew his funds from the operators' control and himself from their councils. But though he did not care to run the risk or to incur the odium, he had no sort of objection to sharing the spoils. Knowing, therefore, or supposing that he knew, the plan of campaign, and that plan jumping with his own bearish inclinations, he continued, on his own account, operations looking to a fall. One may easily

conceive the wrath of the Erie operators at such a treacherous policy; and it is not difficult to imagine their vows of vengeance. Meanwhile all went well with Daniel Drew. Erie looked worse and worse, and the golden harvest seemed drawing near. By the middle of November he had contracted for the delivery of some seventy thousand shares at current prices, averaging, perhaps, 38, and probably was counting his gains. He did not appreciate the full power and resources of his old associates. On the 14th of November their tactics changed, and he found himself involved in terrible entanglements, — hopelessly cornered. His position disclosed itself on Saturday. Naturally the first impulse was to have recourse to the courts. An injunction — a dozen injunctions — could be had for the asking, but, unfortunately, could be had by both parties. Drew's own recent experience, and his intimate acquaintance with the characters of Fisk and Gould, were not calculated to inspire him with much confidence in the efficacy of the law. But nothing else remained, and, after hurried consultations among the victims, the lawyers were applied to, the affidavits were prepared, and it was decided to repair on the following Monday to the so-called courts of justice.

Nature, however, had not bestowed on Daniel Drew the steady nerve and sturdy gambler's pride of either Vanderbilt or of his old companions at Jersey City. His mind wavered and hesitated between different courses of action. His only care was for himself, his only thought was of his own position. He was willing to betray one party or the other, as the case might be. He had given his affidavit to those who were to bring the suit on the Monday, but he stood perfectly ready to employ Sunday in betraying their counsels to the defendants in the suit. A position more contemptible, a state of mind more pitiable, can hardly be conceived. After passing the night in this abject condition, on the morning of Sunday he sought out Mr. Fisk for purposes of self-humiliation and treachery.* He

* It ought perhaps to be stated that this portion of the narrative has no stronger foundation than an affidavit of Mr. Fisk, which has not, however, been publicly contradicted.

then partially revealed the difficulties of his situation, only to have his confidant prove to him how entirely he was caught, by completing to him the revelation. He betrayed the secrets of his new allies, and bemoaned his own hard fate; he was thereupon comforted by Mr. Fisk with the cheery remark that "he (Drew) was the last man who ought to whine over any position in which he placed himself in regard to Erie." The poor man begged to see Mr. Gould, and would take no denial. Finally Mr. Gould was brought in, and the scene was repeated for his edification. The two must have been satiated with revenge. At last they sent him away, promising to see him again that evening. At the hour named he again appeared, and, after waiting their convenience, — for they spared him no humiliation, — he again appealed to them, offering them great sums if they would issue new stock or lend him of their stock. He implored, he argued, he threatened. At the end of two hours of humiliation, persuaded that it was all in vain, that he was wholly in the power of antagonists without mercy, he took his hat, said, "I will bid you good night," and went his way.

There is a touch of nature about this scene which reads like fiction. Indeed, it irresistibly recalls the feebler effort of Dickens to portray Fagin's last night alive, and there is more pathos in the parting address than in the Jew's, — "An old man, my lord! a very, very old man." But the truth is stranger than fiction. Dickens did not dare picture the old "fence" in Oliver Twist turned out of his own house and stripped of his plunder by the very hands through which he had procured it. In the case of Daniel Drew, however, the ideal poetic justice was brought about in fact; the evil instructions returned to plague the inventor, and it is hard to believe that, as he left the Erie offices that night, his apt pupils, even as those of Fagin might have done, did not watch his retiring steps with suppressed merriment; and, when the door had closed upon him, that the one did not explode in loud bursts of laughter, while the other, with a quiet chuckle, plunged his hands into those capacious pockets which yawned for all

the wealth of Erie. Bad as all these things are, terrible as is the condition of affairs only partially revealed, there is a grim humor running through them which ever makes itself felt.

But to return to the course of events. With the lords of Erie forewarned was forearmed. They knew something of the method of procedure in New York courts of law. At this particular juncture Mr. Justice Sutherland, a magistrate of such pure character and unsullied reputation that it is inexplicable how he ever came to be elevated to the bench on which he sits, was holding chambers, according to assignment, for the four weeks between the first Monday in November and the first Monday in December. By a rule of the court, all applications for orders during that time were to be made before him, and he only, according to the courtesy of the Bench, took cognizance of such proceedings. Some general arrangement of this nature is manifestly necessary to avoid continual conflicts of jurisdiction. The details of the assault on the Erie directors having been settled, counsel appeared before Judge Sutherland on Monday morning, and petitioned for an injunction restraining the Erie directors from any new issue of stock or the removal of the funds of the company beyond the jurisdiction of the court, and also asking that the road be placed in the hands of a receiver. The suit was brought in the name of Mr. August Belmont, who was supposed to represent large foreign holders. The petition set forth at length the alleged facts in the case, and was supported by the affidavits of Mr. Drew and others. Mr. Drew apparently did not inform the counsel of the manner in which he had passed his leisure hours on the previous day; had he done so, Mr. Belmont's counsel probably would have expedited their movements. The injunction was, however, duly signed, and, doubtless, immediately served.

Meanwhile Messrs. Gould and Fisk had not been idle. Applications for injunctions and receiverships were a game which two could play at, and long experience had taught these close observers the very great value of the initiative in law. Accordingly, some two hours before the Belmont application was

made, they had sought no less a person than Mr. Justice Barnard, caught him, as it were, either in his bed or at his breakfast, whereupon he had held a *lit de justice*, and made divers astonishing orders. A petition was presented in the name of one McIntosh, a salaried officer of the Erie Road, who claimed also to be a shareholder. It set forth the danger of injunctions and of the appointment of a receiver, the great injury likely to result therefrom, etc. After due consideration on the part of Judge Barnard, an injunction was issued, staying and restraining all suits, and actually appointing Jay Gould receiver, to hold and disburse the funds of the company in accordance with the resolutions of the Board of Directors and the Executive Committee. This certainly was a very brilliant flank movement, and testified not less emphatically to Gould's genius than to Barnard's law; but most of all did it testify to the efficacy of the new combination between Tammany Hall and the Erie Railway. Since the passage of the bill "to legalize counterfeit money," in April, and the present November, new light had burst upon the judicial mind, and as the news of one injunction and a vague rumor of the other crept through Wall Street that day, it was no wonder that operators stood aghast and that Erie fluctuated wildly from 50 to 61 and back to 48.

The Erie directors, however, did not rest satisfied with the position which they had won through Judge Barnard's order. That simply placed them, as it were, in a strong defensive attitude. They were not the men to stop there: they aspired to nothing less than a vigorous offensive. With a superb audacity, which excites admiration, the new trustee immediately filed a supplementary petition. Therein it was duly set forth that doubts had been raised as to the legality of the recent issue of some two hundred thousand shares of stock, and that only about this amount was to be had in America; the trustee therefore petitioned for authority to use the funds of the corporation to purchase and cancel the whole of this amount at any price less than the par value, without regard to the rate at which it had been issued. The desired authority was conferred by Mr.

Justice Barnard as soon as asked. Human assurance could go no further. The petitioners had issued these shares in the bear interest at 40, and had run down the value of Erie to 35; they had then turned round, and were now empowered to buy back that very stock in the bull interest, and in the name and with the funds of the corporation, at par. A law of the State distinctly forbade corporations from operating in their own stock; but this law was disregarded as if it had been only an injunction. An injunction forbade the treasurer from making any disposition of the funds of the company, and this injunction was respected no more than the law. These trustees had sold the property of their wards at 40; they were now prepared to use the money of their wards to buy the same property back at 80, and a judge had been found ready to confer on them the power to do so. Drew could not withstand such tactics, and indeed the annals of Wall Street furnished no precedent or parallel. They might have furnished one, but the opportunity had been lost. Had Robert Schuyler not lived fifteen years too soon, — had he, instead of flying his country and dying broken-hearted in exile, boldly attempted a change of front when his fraudulent issues had filled Wall Street with panic, and had he sought to use the funds of his company for a masterly upward movement in his own manufactured stock, — then, though in those uncultivated and illiberal days his scheme might have come to naught, and he himself might even have passed from the presence of an indignant jury into the keeping of a surly jailer, at least he would have evinced a mind in advance of his day, and could have comforted himself with the assurance that he was the first of a line of great men, and that the time was not far distant when his name and his fame would be cherished among the most brilliant recollections of Wall Street. But Schuyler lived before his time!

When this last, undreamed-of act was made public on Wednesday at noon, it was apparent that the crisis was not far off. Daniel Drew was cornered. Erie was scarce and selling at 47, and would not become plenty until the arrival of the Eng-

lish steamer on Monday; and so, at 47, Mr. Drew flung himself into the breach to save his endangered credit, and, under his purchases, the stock rapidly rose, until at five o'clock Wednesday afternoon it reached 57. Contrary to expectation, the "corner" had not yet culminated. It became evident the next morning that before two o'clock that day the issue would be decided. Drew fought desperately. The Brokers' Board was wild with excitement. High words passed; collisions took place; the bears were savage, and the bulls pitiless. Erie touched 62, and there was a difference of sixteen per cent between cash stock and stock sold to be delivered in three days, — when the steamer would be in, — and a difference of ten per cent between stock to be delivered on the spot and that to be delivered at the usual time, which was a quarter after two o'clock. Millions were handled like thousands; fabulous rates of interest were paid; rumors of legal proceedings were flying about, and forays of the Erie chiefs on the Vanderbilt roads were confidently predicted. New York Central suddenly shot up seven per cent under these influences, and Vanderbilt seemed about to enter the field. The interest of the stock market centred in the combatants and on these two great corporations. All other stocks were quiet and neglected while the giants were fighting it out. The battle was too fierce to last long. At a quarter before three o'clock the struggle would be over. Yet now, at the very last moment, the prize which trembled before them eluded the grasp of the Erie ring. Their opponent was not saved, but they shared his disaster. Their combination had turned on the fact, disclosed to them by the Erie books, that some three hundred thousand shares of its stock had been issued in the ten-share certificates which alone are transmitted to London. This amount they supposed to be out of the country; the balance they could account for as beyond the reach of Drew. Suddenly, as two o'clock approached, and Erie was trembling in the sixties, all Broadway — every tailor and boot-maker and cigar-vender of New York — seemed pouring into Broad Street, and each new-comer held eagerly before

him one or more of those ten-share certificates which should have been in London. Not only this, but the pockets of the agents of foreign bankers seemed bursting with them. Bedlam had suddenly broken loose in Wall Street. It was absolutely necessary for the conspirators to absorb this stock, to keep it from the hands of Drew. This they attempted to do, and manfully stood their ground, fighting against time. Suddenly, when the hour had almost come, — when five minutes more would have landed them in safety, — through one of those strange incidents which occur in Wall Street and which cannot be explained, they seemed smitten with panic. It is said their bank refused to certify their checks for the suddenly increased amount; the sellers insisted on having certified checks, and, in the delay caused by this unforeseen difficulty, the precious five minutes elapsed, and the crisis had passed. The fruits of their plot had escaped them. Drew made good his contracts at 57, the stock at once fell heavily to 42, and a dull quiet succeeded to the excitement of the morning. The hand of the government had made itself felt in Wall Street.

The Broad Street conflict was over, and some one had reaped a harvest. Who was it? It was not Drew, for his losses, apart from a ruined prestige, were estimated at nearly a million and a half of dollars. The Erie directors were not the fortunate men, for their only trophies were great piles of certificates of Erie stock, which had cost them "corner" prices, and for which no demand existed. If Drew's loss was a million and a half, their loss was likely to be nearer three millions. Who, then, were the recipients of these missing millions? There is an ancient saying, which seems to have been tolerably verified in this case, that when certain persons fall out certain other persons come by their dues. The "corner" was very beautiful in all its details, and most admirably planned; but, unfortunately, those who engineered it had just previously made the volume of stock too large for accurate calculation. For once the outside public had been at hand and Wall Street had been found wanting. A large portion of the vast sum taken from the combatants found its way into the pockets of the

agents of English bankers, and a part of it was accounted for by them to their principals; another portion went to relieve anxious holders among the American outside public; the remainder fell to professional operators, probably far more lucky than sagacious. Still, there had been a fall before there was a rise. The subsequent disaster, perhaps, no more than counterbalanced the earlier victory; at any rate, Messrs. Gould and Fisk did not succumb, but preserved a steady front, and Erie was more upon the street than ever. In fact, it was wholly there now. The recent operations had proved too outrageous even for the Brokers' Board. A new rule was passed, that no stock should be called, the issues of which were not registered at some respectable banking-house. The Erie directors declined to conform to this rule, and their road was stricken from the list of calls. Nothing daunted at this, these Protean creatures at once organized a new board of their own, and so far succeeded in their efforts as to have Erie quoted and bought and sold as regularly as ever.

Though the catastrophe had taken place on the 19th, the struggle was not yet over. The interests involved were so enormous, the developments so astounding, such passions had been aroused, that some safety-valve through which suppressed wrath could work itself off was absolutely necessary, and this the courts of law afforded. The attack was stimulated by various motives. The *bona fide* holders of the stock, especially the foreign holders, were alarmed for the existence of their property. The Erie ring had now boldly taken the position that their duty was, not to manage the road in the interests of its owners, not to make it a dividend-paying corporation, but to preserve it from consolidation with the Vanderbilt monopoly. This policy was openly proclaimed by Mr. Gould, at a later day, before an investigating committee at Albany. With unspeakable effrontery, — an effrontery so great as actually to impose on his audience and a portion of the press, and make them believe that the public ought to wish him success, — he described how stock issues at the proper time, to any required amount, could alone keep him in control of

the road, and keep Mr. Vanderbilt out of it; it would be his duty, therefore, he argued, to issue as much new stock, at about the time of the annual election, as would suffice to keep a majority of all the stock in existence under his control; and he declared that he meant to do this.* The strangest thing of all was, that it never seemed to occur to his audience that the propounder of this comical sophistry was a trustee and guardian for the stockholders, and not a public benefactor; and that the owners of the Erie Road might possibly prefer not to be deprived of their property, in order to secure the blessing of competition. So unique a method of securing a re-election was probably never before suggested with a grave face, and yet, if we may believe the reporters, Mr. Gould, in developing it, produced a very favorable impression on the committee. It was hardly to be expected that such advanced views as to the duties and powers of railway directors would favorably impress commonplace individuals who might not care to have their property scaled down to meet Mr. Gould's views of public welfare. These persons accordingly, popularly supposed to be represented by Mr. Belmont, wished to get their property out of the hands of such fanatics in the

* *Question to Mr. Gould.* For the information of the committee, would you give us your opinion as to the utility of that section of the general railroad law, under which so many issues of convertible bonds have been made?

*Answer.* I could only speak as to the Erie Road; that law saved the Erie Road from bankruptcy; and as long as that law is unrepealed, I should do what I did again. I should save the road. I think it is a good law.

*Q.* Is it not liable to abuse?

*A.* I have never known it to be abused; if that was repealed, I think that Mr. Vanderbilt would have the road; but as long as it is not repealed it is held *in terrorem* over him.

*Q.* Suppose the section was amended so as to require the consent of the stockholders?

*A.* Suppose he owned all the stock, what would be the difference? . . . .

*Q.* What other effect would it (the repeal of Section 10) have?

A. I think it would lay the State open to a great monopoly, — the greatest the world has ever seen.

Much more followed in the same style. One remark of Mr. Gould's, however, in this examination, bore the stamp of truth and perspicuity. It is recorded as follows: "The Erie road won't be a dividend-paying road for a long time on its common stock."

cause of cheap transportation and plentiful stock, with the least possible delay. Combined with these were the operators who had suffered in the late "corner," and who desired to fight for better terms and a more equal division of plunder. Behind them all, Vanderbilt was supposed to be keeping an eager eye on the long-coveted Erie. Thus the materials for litigation existed in abundance.

On Monday, the 23d, Judge Sutherland vacated Judge Barnard's order appointing Jay Gould receiver, and, after seven hours' argument and some exhibitions of vulgarity and indecency on the part of counsel, which vied with those of the previous April, he appointed Mr. Davies, an ex-chief justice of the Court of Appeals, receiver of the road and its franchise, leaving the special terms of the order to be settled at a future day. The seven hours' struggle had not been without an object; that day Judge Barnard had been peculiarly active. The morning hours he had beguiled by the delivery to the grand jury of one of the most astounding charges ever recorded; and now, as the shades of evening were falling, he closed the labors of the day by issuing a stay of the proceedings then pending before his associate.* Tues-

* The charge referred to is altogether too curious to be forgotten; it was couched in the following terms:—

"GENTLEMEN OF THE GRAND JURY,—I deem it not inappropriate at the present time to call your attention to three or four subjects that, in my judgment, the grand jury should look into: First, in regard to alleged frauds at elections; second, in regard to the alleged corruptions of the judiciary here; third, as to the action of certain newspapers in New York in perpetrating daily and hourly libels. I had intended, gentlemen, at the commencement of this term, to have gone over many of these subjects more fully than I can now; but I am led to-day not to delay it any longer in consequence of the annoyance I am subjected to by newspapers and letter-writers, not borne out, of all sorts of vilifications and abuses for offences of which I certainly know nothing, and see if the writers of some of these articles cannot be made to come before you and substantiate some among the many of the different allegations that they have made against the judge that now addresses you. In to-day's Tribune and to-day's Times, along with articles in the Jersey papers and elsewhere, are charges of the most atrocious character made against corruptions, in interfering with the duties of electors, and charging the judge with being in a combination in Wall Street. Now, it is unnecessary for me to say to you that he never bought or sold or owned a share of stock in his life, and as for the large fortune of $5,000,000 which one of the papers charges

day had been named by Judge Sutherland, at the time he appointed his receiver, as the day upon which he would settle the details of the order. His first proceeding upon that day, on finding his action stayed by Judge Barnard, was to grant a motion to show cause, on the next day, why Barnard's order should not be vacated. This style of warfare, however, savored altogether too much of the tame defensive to meet successfully the bold strategy of Messrs. Gould and Fisk. They carried the war into Africa. In the twenty-four hours during which Judge Sutherland's order to show cause was pending three new actions were commenced by them. In the first

him with being possessed of, he has not now nor did he ever have, belonging to him, separate from his wife, a single dollar's worth of property, and is to-day dependent upon his salary as a judge and the charity of his wife; and why these particular and atrocious charges at this particular time should be made with such boldness and audacity is a matter I hope you as grand jurors, whose duty it is, will look into, so that if you find them to be substantial, or even a suspicion that they are true, that you will give the judge a chance to resign. For infamy means one thing, and it ought to be ferreted out; and if a man or a newspaper editor will sit down deliberately and make a charge without any proof, let us see whether the rigor and terror of the law will not stop this thing in future. For eleven years this judge has submitted to it without any notice, and now, having arrived at a period of life when his usefulness is impaired by such charges, he deems it his duty, and yours, gentlemen, to look into the matter whenever you have leisure, and say whether a combination of thieves, scoundrels, and rascals, who have infested Wall Street and Broad Street for years, and are now quarrelling among themselves, shall be permitted to turn around and endeavor to hide their own tracks by abuse and vilification of the judge."

It may be interesting to record how this fulmination affected the papers referred to. The Times the next morning commented on it as follows: "What we have said and done in the matter we have said and done deliberately; .... we believe we have said nothing that is not true, and nothing that cannot be proved to be true. At all events, we shall very willingly accept the responsibility of establishing its truth and of vindicating ourselves from the judge's imputations for having said it. A few days later it was reported that a true bill had been found against the Times, and that paper on the 26th congratulated the public on the fact. Finally, when Judge Barnard determined to drop the matter, the Times, in its issue of December 1, discoursed as follows on the subject: "We beg the judge to understand that we are quite ready to meet the issue that he tendered us, and to respond to such an indictment as he first urged the grand jury to find against us, or to a suit for damages, which would, perhaps, better suit the deplorable condition of pecuniary dependence to which he says he is reduced."

Nothing further came of the matter.

place, they sued the suers. Alleging the immense injury likely to result to the Erie Road from actions commenced, as they alleged, solely with a view of extorting money in settlement, Mr. Belmont was sued for a million of dollars in damages. Their second suit was against Messrs. Work, Schell, and others, concerned in the litigations of the previous spring, to recover the $429,250 then paid them, as was alleged, in a fraudulent settlement. These actions were, however, commonplace, and might have been brought by ordinary men. Messrs. Gould and Fisk were always displaying the invention of genius. The same day they carried their quarrels into the United States courts. The whole press, both of New York and of the country, disgusted with the parody of justice enacted in the State courts, had cried aloud to have the whole matter transferred to the United States tribunals, the decisions of which might have some weight, and where, at least, no partisans upon the bench would shower each other with stays, injunctions, vacatings of orders, and other such pellets of the law. The Erie ring, as usual, took time by the forelock. While their slower antagonists were deliberating, they acted. On this Monday, the 23d, one Henry B. Whelpley, who had been a clerk of Gould's, and who claimed to be a stockholder in the Erie and a citizen of New Jersey, instituted a suit against the Erie Railway before Judge Blatchford, of the United States District Court. Alleging the doubts which hung over the validity of the recently issued stock, he petitioned that a receiver might be appointed, and the company directed to transfer into his hands enough property to secure from loss the plaintiff as well as all other holders of the new issues. The Erie counsel were on the ground, and, as soon as the petition was read, waived all further notice as to the matters contained in it; whereupon the court at once appointed Jay Gould receiver, and directed the Erie Company to place eight millions of dollars in his hands to protect the rights represented by the plaintiff. Of course the receiver was required to give bonds with sufficient sureties. Among the sureties was James Fisk, Jr. The brilliancy of this move

was only surpassed by its success. It fell like a bombshell in the enemy's camp, and scattered dismay among those who still preserved a lingering faith in the virtue of law as administered by any known courts. The interference of the court was in this case asked for on the ground of fraud. If any fraud had been committed, the officers of the company alone could be the delinquents. To guard against the consequences of that fraud, a receivership was prayed for, and the court appointed as receiver the very officer in whom the alleged frauds, on which its action was based, must have originated. It is true, as was afterwards observed by Judge Nelson in setting it aside, that a *prima facie* case, for the appointment of a receiver "was supposed to have been made out," that no objection to the person suggested was made, and that the right was expressly reserved to other parties to come into court, with any allegations they saw fit against Receiver Gould. The collusion in the case was, nevertheless, so evident, the facts were so notorious and so apparent from the very papers before the court, and the character of Judge Blatchford is so far above suspicion, that it is hard to believe that this order was not procured from him by surprise, or through the agency of some counsel in whom he reposed a misplaced confidence. The Erie ring, at least, had no occasion to be dissatisfied with this day's proceedings.

The next day Judge Sutherland made short work of his brother Barnard's stay of proceedings in regard to the Davies receivership. He vacated it at once, and incontinently proceeded, wholly ignoring the action of Judge Blatchford on the day before, to settle the terms of the order, which, covering as it did the whole of the Erie property and franchise, excepting only the operating of the road, bade fair to lead to a conflict of jurisdiction between the State and Federal courts.

And now a new judicial combatant appears in the arena. It is difficult to say why Judge Barnard, at this time, disappears from the narrative. Perhaps the notorious judicial violence of the man, which must have made his eagerness as dangerous to the cause he espoused as the eagerness of a too

swift witness, had alarmed the Erie counsel. Perhaps the fact that Judge Sutherland's term in chambers would expire in a few days had made them wish to intrust their cause to the magistrate who was to succeed him. At any rate, the new order staying proceedings under Judge Sutherland's order was obtained from Judge Cardozo, — it is said, somewhat before the terms of the receivership had been finally settled. The change spoke well for the discrimination of those who made it, for Judge Cardozo is a very different man from Judge Barnard. Courteous but inflexible, subtle, clear-headed, and unscrupulous, this magistrate conceals the iron hand beneath the silken glove. Equally versed in the laws of New York and in the mysteries of Tammany, he had earned his place by a partisan decision on the excise law, and was nominated for the bench by Mr. Fernando Wood, in a few remarks concluding as follows: "Judges were often called on to decide on political questions, and he was sorry to say the majority of them decided according to their political bias. It was therefore absolutely necessary to look to their candidate's political principles. He would nominate, as a fit man for the office of Judge of the Supreme Court, Albert Cardozo." Nominated as a partisan, a partisan Cardozo has always been, when the occasion demanded. Such was the new and far more formidable champion who now confronted Sutherland, in place of the vulgar Barnard. His first order in the matter — to show cause why the order of his brother judge should not be set aside — was not returnable until the 30th, and in the intervening five days many events were to happen.

Immediately after the settlement by Judge Sutherland of the order appointing Judge Davies receiver, that gentleman had proceeded to take possession of his trust. Upon arriving at the Erie building, he found it converted into a fortress, with a sentry patrolling behind the bolts and bars, to whom was confided the duty of scrutinizing all comers, and of admitting none but the faithful allies of the garrison. It so happened that Mr. Davies, himself unknown to the custodian, was accompanied by Mr. Eaton, the former attorney of the Erie

corporation. This gentleman was recognized by the sentry, and forthwith the gates flew open for himself and his companion. In a few moments more the new receiver astonished Messrs. Gould and Fisk, and certain legal gentlemen with whom they happened to be in conference, by suddenly appearing in the midst of them. The apparition was not agreeable. Mr. Fisk, however, with a fair appearance of cordiality, welcomed the strangers, and shortly after left the room. Speedily returning, his manner underwent a change, and he requested the new-comers to go the way they came. As they did not comply at once, he opened the door, and directed their attention to some dozen men of forbidding aspect who stood outside, and who, he intimated, were prepared to eject them forcibly if they sought to prolong their unwelcome stay. As an indication of the lengths to which Mr. Fisk was prepared to go, this was sufficiently significant. The movement, however, was a little too rapid for his companions; the lawyers protested, Mr. Gould apologized, Mr. Fisk cooled down, and his familiars retired. The receiver then proceeded to give written notice of his appointment, and the fact that he had taken possession; disregarding, in so doing, an order of Judge Cardozo, staying proceedings under Judge Sutherland's order, which one of the opposing counsel drew from his pocket, but which Mr. Davies not inaptly characterized as a "very singular order," seeing that it was signed before the terms of the order it sought to affect were finally settled. At length, however, at the earnest request of some of the subordinate officials, and satisfied with the formal possession he had taken, the new receiver delayed further action until Friday. He little knew the resources of his opponents, if he vainly supposed that a formal possession signified anything. The succeeding Friday found the directors again fortified within, and himself a much enjoined wanderer without. The vigilant guards were now no longer to be beguiled. Within the building, constant discussions and consultations were taking place; without, relays of detectives incessantly watched the premises. No rumor was too wild for public credence. It was confi-

dently stated that the directors were about to fly the State and the country, — that the treasury had already been conveyed to Canada. At last, late on Sunday night, Mr. Fisk with certain of his associates left the building, and made for the Jersey Ferry ; but on the way he was stopped by a vigilant lawyer, and many papers were served upon him. His plans were then changed. He returned to the office of the company, and presently the detectives saw a carriage leave the Erie portals, and heard a loud voice order it to be driven to the Fifth Avenue Hotel. Instead of going there, however, it drove to the ferry, and presently an engine, with an empty directors' car attached, dashed out of the Erie station in Jersey City, and disappeared in the darkness. The detectives met and consulted ; the carriage and the empty car were put together, and the inference, announced in every New York paper the succeeding day, was that Messrs. Fisk and Gould had absconded with millions of money to Canada.

That such a ridiculous story should have been published, much less believed, simply shows how utterly demoralized the public mind had become, and how prepared for any act of high-handed fraud or outrage. The libel did not long remain uncontradicted. The next day a card from Mr. Fisk was telegraphed to the newspapers, denying the calumny in indignant terms. The eternal steel rails were again made to do duty, and the midnight flitting became a harmless visit to Binghamton on business connected with a rolling-mill. Judge Balcom, however, of injunction memory in the earlier records of the Erie suits, resides at Binghamton, and a leading New York paper not inaptly made the timid inquiry of Mr. Fisk, "If he really thought that Judge Balcom was running a rolling-mill of the Erie Company, what did he think of Judge Barnard?" Mr. Fisk, however, as became him in his character of the Mæcenas of the bar, instituted suits claiming damages in fabulous sums, for defamation of character, against some half-dozen of the leading papers, and nothing further was heard of the matter, nor, indeed, of the suits either. Not so of the trip to Binghamton. On Tuesday, the 1st of December, while one set

of lawyers were arguing an appeal in the Whelpley case before Judge Nelson in the Federal courts, and another set were procuring orders from Judge Cardozo staying proceedings authorized by Judge Sutherland, a third set were aiding Judge Balcom in certain new proceedings instituted in the name of the Attorney-General against the Erie Road. The result arrived at was, of course, that Judge Balcom declared his to be the only shop where a regular, reliable article in the way of law was retailed, and then proceeded forthwith to restrain and shut up the opposition establishments. The action was brought to terminate the existence of the defendant as a corporation, and, by way of preliminary, application was made for an injunction and the appointment of a receiver. His Honor held that, as only three receivers had as yet been appointed, he was certainly entitled to appoint another. It was perfectly clear to him that it was his duty to enjoin the defendant corporation from delivering the possession of its road, or of any of its assets, to either of the receivers already appointed; it was equally clear that the corporation would be obliged to deliver them to any receiver he might appoint. He was not prepared to name a receiver just then, however, though he intimated that he should not hesitate to do so if necessary. So he contented himself with the appointment of a referee to look into matters, and, generally, enjoined the directors from omitting to operate the road themselves, or from delivering the possession of it to "any person claiming to be a receiver."

This raiding upon the agricultural judges was not peculiar to the Erie party. On the contrary, in this proceeding it rather followed than set an example; for a day or two previous to Mr. Fisk's hurried journey, Judge Peckham of Albany had, upon papers identical with those in the Belmont suit, issued divers orders, similar to those of Judge Balcom, but on the other side, tying up the Erie directors in a most astonishing manner, and clearly hinting at the expediency of an additional receiver to be appointed at Albany. The amazing part of these Peckham and Balcom proceedings is, that they seem

to have been initiated with perfect gravity, and neither to have been looked upon as jests, nor intended by their originators to bring the courts and the laws of New York into ridicule and contempt. Of course the several orders in these cases were of no more importance than so much waste paper, unless, indeed, some very cautious counsel may have considered an extra injunction or two very convenient things to have in his house; and yet, curiously enough, from a legal point of view, those in Judge Balcom's court seem to have been almost the only properly and regularly initiated proceedings in the whole case.

These little rural episodes in no way interfered with a renewal of vigorous hostilities in New York. While Judge Balcom was appointing his referee, Judge Cardozo granted an order for a reargument in the Belmont suit, — which brought up again the appointment of Judge Davies as receiver, — and assigned the hearing for the 6th of December. This step on his part bore a curious resemblance to certain of his performances in the notorious case of the Wood leases, and made the plan of operations perfectly clear. The period during which Judge Sutherland was to sit in chambers was to expire on the 4th of December, and Cardozo himself was to succeed him; he now, therefore, proposed to signalize his associate's departure from chambers by reviewing his orders. No sooner had he granted the motion, than the opposing counsel applied to Judge Sutherland, who forthwith issued an order to show cause why the reargument ordered by Judge Cardozo should not take place at once. Upon which the counsel of the Erie Road instantly ran over to Judge Cardozo, who vacated Judge Sutherland's order out of hand. The lawyers then left him and ran back to Judge Sutherland with a motion to vacate this last order. The contest was now becoming altogether too ludicrous. Somebody must yield, and when it was reduced to that, the honest Sutherland was pretty sure to give way to the subtle Cardozo. Accordingly the hearing on this last motion was postponed until the next morning, when Judge Sutherland made a not undignified statement as to his position, and

closed by remitting the whole subject to the succeeding Monday, at which time Judge Cardozo was to succeed him in chambers. Cardozo, therefore, was now in undisputed possession of the field. In his closing explanation Judge Sutherland did not quote, as he might have done, the following excellent passage from the opinion of the court, of which both he and Cardozo were justices, delivered in the Schell case as recently as the last day of the previous June: "The idea that a cause, by such manœuvres as have been resorted to here, can be withdrawn from one judge of this court and taken possession of by another; that thus one judge of the same and no other powers can practically prevent his associate from exercising his judicial functions; that thus a case may be taken from judge to judge whenever one of the parties fears that an unfavorable decision is about to be rendered by the judge who, up to that time, had sat in the cause, and that thus a decision of a suit may be constantly indefinitely postponed at the will of one of the litigants, only deserves to be noticed as being a curiosity in legal tactics, — a remarkable exhibition of inventive genius and fertility of expedient to embarrass a suit which this extraordinarily conducted litigation has developed. . . . . Such a practice as that disclosed by this litigation, sanctioning the attempt to counteract the orders of each other in the progress of the suit, I confess is new and shocking to me, . . . . and I trust that we have seen the last in this high tribunal of such practices as this case has exhibited. No apprehension, real or fancied, that any judge is about, either wilfully or innocently, to do a wrong, can palliate, much less justify it." * Neither did Judge Sutherland state, as he might have stated, that this admirable expression of the sentiments of the full bench was written and delivered by Judge Albert Cardozo. Probably also Judge Cardozo and all his brother judges, rural and urban, as they used these bow-strings of the law, right and left, — as their reckless orders and injunctions struck deep into business circles far beyond the limits of their State, — as they degraded them-

* *Schell* v. *Erie Railway Co.*, 51 Barbour's S. C. 373, 374.

selves in degrading their order, and made the ermine of supreme justice scarcely more imposing than the motley of the clown, — these magistrates may have thought that they had developed at least a novel, if not a respectable, mode of conducting litigation. They had not done even this. They had simply, so far as in them lay, turned back the wheels of progress and reduced the America of the nineteenth century to the level of the France of the sixteenth. "The advocates and judges of our times find bias enough in all causes to accommodate them to what they themselves think fit. . . . . What one court has determined one way another determines quite contrary, and itself contrary to that at another time; of which we see very frequent examples, owing to that practice admitted among us, and which is a marvellous blemish to the ceremonious authority and lustre of our justice, of not abiding by one sentence, but running from judge to judge, and court to court, to decide one and the same cause." *

It was now very clear that Receiver Davies might abandon all hope of operating the Erie Railway, and that Messrs. Gould and Fisk were borne upon the swelling tide of victory. The prosperous aspect of their affairs encouraged these last-named gentlemen to yet more vigorous offensive operations. The next attack was upon Vanderbilt in person. On Saturday, the 5th of December, only two days after Judge Sutherland and Receiver Davies were disposed of, the indefatigable Fisk waited on Commodore Vanderbilt, and, in the name of the Erie Company, tendered him fifty thousand shares of Erie common stock at 70.† As the stock was then selling in Wall

* Montaigne's Works, Vol. II. p. 316.

† Throughout these proceedings glimpses are from time to time obtained of the more prominent characters in their undress, as it were, which have in them a good many elements both of nature and humor. The following description of the visit in which this tender was made was subsequently given by Fisk on the witness-stand: "I went to his (Vanderbilt's) house; it was a bad, stormy day, and I had the shares in a carpet-bag; I told the Commodore I had come to tender 50,000 shares of Erie and wanted back the money which we had paid for them and the bonds, and I made a separate demand for the $ 1,000,000 which had been paid to cover his losses; he said he had nothing to do with the Erie now, and must consult his counsel; . . . . Mr. Shearman

Street at 40, the Commodore naturally declined to avail himself of this liberal offer. He even went further, and, disregarding his usual wise policy of silence, wrote to the New York Times a short communication, in which he referred to the alleged terms of settlement of the previous July, so far as they concerned himself, and denied them in the following explicit language: "I have had no dealings with the Erie Railway Company, nor have I ever sold that company any stock or received from them any *bonus*. As to the suits instituted by Mr. Schell and others, I had nothing to do with them, nor was I in any way concerned in their settlement." This was certainly an announcement calculated to confuse the public; but the confusion became confounded, when, upon the 10th, Mr. Fisk followed him in a card in which he reiterated the alleged terms of settlement, and reproduced two checks of the Erie Company, of July 11, 1868, made payable to the treasurer and by him indorsed to C. Vanderbilt, upon whose order they had been paid. These two checks were for the sum of a million of dollars. He further said that the company had a paper in Mr. Vanderbilt's own handwriting, stating that he had placed fifty thousand shares of Erie stock in the hands of certain persons, to be delivered on payment of $3,500,000, which sum he declared had been paid. Undoubtedly these apparent discrepancies of statement admitted of an explanation; and some thin veil of equivocation, such as the transaction of the business through third parties, justified Vanderbilt's statements to his own conscience. Comment,

was with me: the date I don't know; it was about eleven o'clock in the morning: don't know the day, don't know the month, don't know the year; I rode up with Shearman, holding the carpet-bag tight between my legs; I told him he was a small man and not much protection; this was dangerous property, you see, and might blow up; . . . . besides Mr. Shearman the driver went in with the witnesses, and besides the Commodore I spoke with the servant-girl; the Commodore was sitting on the bed with one shoe off and one shoe on; . . . . don't remember what more was said; I remember the Commodore put on his other shoe; I remember those shoes on account of the buckles; you see there were four buckles on that shoe, and I know it passed through my mind that if such men wore that kind of shoe I must get me a pair; this passed through my mind, but I did not speak of it to the Commodore; I was very civil to him."

however, is wholly superfluous, except to call attention to the amount of weight which is to be given to the statements and denials, apparently the most general and explicit, which from time to time were made by the parties to these proceedings. This short controversy merely added a little more discredit to what was already not deficient in that respect. On the 10th of December the Erie Company sued Commodore Vanderbilt for $ 3,500,000, specially alleging in their complaint the particulars of that settlement, all knowledge of or connection with which the defendant had so emphatically denied.

None of the multifarious suits which had been brought as yet were aimed at Mr. Drew. The quondam treasurer had apparently wholly disappeared from the scene on the 19th of November. Mr. Fisk took advantage, however, of a leisure day, to remedy this oversight, and a suit was commenced against Drew, on the ground of certain transactions between him, as treasurer, and the railway company, in relation to some steamboats concerned in the trade of Lake Erie. The usual allegations of fraud, breach of trust, and other trifling and, technically, not State prison offences, were made, and damages were set at a million of dollars.

Upon the 8th the argument in Belmont's case had been reopened before Judge Cardozo in New York, and upon the same day, in Oneida County, Judge Boardman, another justice of the Supreme Court, had proceeded to contribute his share to the existing complications. Counsel in behalf of Receiver Davies had appeared before him, and, upon their application, the Cardozo injunction, which restrained the receiver from taking possession of the Erie Railway, had been dissolved. Why this application was made, or why it was granted, surpasses comprehension. However, the next day, Judge Boardman's order having been read in court before Judge Cardozo, that magistrate suddenly revived to a full appreciation of the views expressed by him in June in regard to judicial interference with judicial action, and at once stigmatized Judge Boardman's action as "extremely indecorous." Neglecting, however, the happy opportunity to express an opinion as to

his own conduct during the previous week, he simply stayed all proceedings under this new order, and applied himself to the task of hearing the case before him reargued.

This hearing lasted many days, was insufferably long and inexpressibly dull. While it was going on, upon the 15th, Judge Nelson, in the United States Court, delivered his opinion in the Whelpley suit, reversing, on certain technical grounds, the action of Judge Blatchford, and declaring that no case for the appointment of a receiver had been made out; accordingly he set aside that of Gould, and, in conclusion, sent the matter back to the State court, or, in other words, to Judge Cardozo, for decision. Thus the gentlemen of the ring, having been most fortunate in getting their case into the Federal court before Judge Blatchford, were now even more fortunate in getting it out of that court when it had come before Judge Nelson. After this, room for doubt no longer existed. Brilliant success at every point had crowned the strategy of the Erie directors. For once Vanderbilt was effectually routed and driven from the field. That he shrunk from continuing the contest against such opponents is much to his credit. It showed that he, at least, was not prepared to see how near he could come to the doors of a State prison and yet not enter them; that he did not care to take in advance the opinion of leading counsel as to whether what he meant to do might place him in the felons' dock. Thus Erie was wholly given over to the control of the ring. No one seemed any longer to dispute their right and power to issue as much new stock as might seem to them expedient. Injunctions had failed to check them; receivers had no terrors for them. Secure in their power, they now extended their operations over sea and land, leasing railroads, buying steamboats, ferries, theatres, and rolling-mills, building connecting links of road, laying down additional rails, and, generally, proving themselves a power wherever corporations were to be influenced or legislatures were to be bought.

Christmas, the period of peace and good-will, was now approaching. The dreary arguments before Judge Cardozo

had terminated on December 18, long after the press and the public had ceased to pay any attention to them, and already rumors of a settlement were rife. Yet it was not meet that the settlement should be effected without some final striking catastrophe, some characteristic concluding tableau. Among the many actions which had incidentally sprung from these proceedings was one against Mr. Samuel Bowles, the editor of the Springfield Republican, brought by Mr. Fisk in consequence of an article which had appeared in that paper, reflecting most severely on Fisk's proceedings and private character, — his past, his present, and his probable future. On the 22d of December, Mr. Bowles happened to be in New York, and, as he was standing in the office of his hotel, talking with a friend, was suddenly arrested on the warrant of Judge McCunn, hurried into a carriage, and driven to Ludlow Street Jail, where he was locked up for the night. This excellent jest afforded intense amusement, and was the cause of much wit that evening at an entertainment given by the Tammany ring to the newly elected mayor of New York, at which entertainment Mr. James Fisk, Jr., was an honored guest. The next morning the whole press was in a state of high indignation, and Mr. Bowles had suddenly become the best-advertised editor in the country. At an early hour he was, of course, released on bail, and with this outrage the second Erie contest was brought to a close. It seemed right and proper that proceedings which, throughout, had set public opinion at defiance, and in which the Stock Exchange, the courts, and the legislature had come in for equal measures of opprobrium for their disregard of private rights, should be terminated by an exhibition of petty spite, in which bench and bar, judge, sheriff, and jailer, lent themselves with base subserviency to a violation of the liberty of the citizen.

It was not until the 10th of February that Judge Cardozo published his decision setting aside the Sutherland receivership, and establishing on a basis of authority the right to over-issue stock at pleasure. The subject was then as obsolete and forgotten as though it had never absorbed the public

attention. And another "settlement" had already been effected. The details of this arrangement have not been dragged to light through the exposures of subsequent litigation. But it is not difficult to see where and how a combination of overpowering influence may have been effected, and a guess might even be hazarded as to its objects and its victims. The fact that a settlement had been arrived at was intimated in the papers of the 26th of December. On the 19th of the same month a stock dividend of eighty per cent in the New York Central had been suddenly declared by Vanderbilt. Presently the legislature met. While the Erie ring seemed to have good reasons for apprehending hostile legislation, Vanderbilt, on his part, might have feared for the success of a bill which was to legalize his new stock. But hardly a voice was raised against the Erie men, and the bill of the Central was safely carried through. This curious absence of opposition did not stop here, and soon the two parties were seen united in an active alliance. Vanderbilt wanted to consolidate his roads; the Erie directors wanted to avoid the formality of annual elections. Thereupon two other bills went hastily through this honest and patriotic legislature, the one authorizing the Erie Board, which had been elected for one year, to classify itself so that one fifth only of its members should vacate office during each succeeding year, the other consolidating the Vanderbilt roads into one colossal monopoly. Public interests and private rights seem equally to have been the victims. It is impossible to say that the beautiful unity of interests which led to such results was the fulfilment of the December settlement; but it is a curious fact that the same paper which announced in one column that Vanderbilt's two measures, known as the consolidation and Central scrip bills had gone to the Governor for signature, should, in another, have reported the discontinuance of the Belmont and Whelpley suits by the consent of all interested.* It may be that public and private interests were not thus balanced and traded away in a servile legislature, but the strong probabilities are that the settlement

* See the New York Tribune of May 10, 1869.

of December made white even that of July. Meanwhile the conquerors — the men whose names had been made notorious through the whole land in all these infamous proceedings — were at last undisputed masters of the situation, and no man questioned the firmness of their grasp on the Erie Railway. They walked erect and proud of their infamy through the streets of our great cities; they voluntarily subjected themselves to that to which other depredators are compelled to submit, and, by exposing their portraits in public conveyances, converted noble steamers into branch galleries of a police-office; nay, more, they bedizened their persons with gold lace, and assumed honored titles, until those who witnessed in silent contempt their strange antics were disposed to exclaim in the language of poor Doll Tearsheet: "An Admiral! God's light, these villains will make the word as odious as the word 'occupy,' which was an excellent good word before it was ill sorted; therefore, Admirals had need look to 't."

The subsequent history of the Erie Railway, under the management of the men who had thus succeeded in gaining absolute control over it, forms no part of this narrative. The attempt has been made simply to trace the course of events which resulted in placing a national thoroughfare in the hands of unscrupulous gamblers, and to describe the complications which marked their progress to power. The end was finally attained, when, after every opponent had, by fair means or by foul, been driven from the conflict, that strange law was enacted which assured these men, elected for one year, a five years' term of power, beyond the control of their stockholders. From that moment all the great resources of the Erie Railway became mere engines with which to work their lawless will.

Comment would only weaken the force of this narrative. It sufficiently suggests its own moral. The facts which have been set forth cannot but have revealed to every observant eye the deep decay which has eaten into our social edifice. No portion of our system was left untested, and no portion

showed itself to be sound. The stock exchange revealed itself as a haunt of gamblers and a den of thieves; the offices of our great corporations appeared as the secret chambers in which trustees plotted the spoliation of their wards; the law became a ready engine for the furtherance of wrong, and the ermine of the judge did not conceal the eagerness of the partisan; the halls of legislation were transformed into a mart in which the price of votes was higgled over, and laws, made to order, were bought and sold; while under all, and through all, the voice of public opinion was silent or was disregarded.

It is not, however, in connection with the present that all this has its chief significance. It speaks ominously for the future. It may be that our society is only passing through a period of ugly transition, but the present evil has its root deep down in the social organization, and springs from a diseased public opinion. Failure seems to be regarded as the one unpardonable crime, success as the all-redeeming virtue, the acquisition of wealth as the single worthy aim of life. Ten years ago such revelations as these of the Erie Railway would have sent a shudder through the community, and would have placed a stigma on every man who had had to do with them. Now they merely incite others to surpass them by yet bolder outrages and more corrupt combinations. Were this not so, these things would be as impossible among us now as they are elsewhere, or as they were here not many years ago. While this continues it is mere weakness to attribute the consequences of a lax morality to a defective currency, or seek to prevent its outward indications by statute remedies. The root of the disease is deep; external applications will only hide its dangerous symptoms. It is well to reform the currency, it is well to enact laws against malefactors; but neither the one nor the other will restore health to a business community which tolerates successful fraud, or which honors wealth more than honesty.

One leading feature of these developments, however, is, from its political aspect, especially worthy of the attention of the American people. Modern society has created a class

of artificial beings who bid fair soon to be the masters of their creator. It is but a very few years since the existence of a corporation controlling a few millions of dollars was regarded as a subject of grave apprehension, and now this country already contains single organizations which wield a power represented by hundreds of millions. These bodies are the creatures of single States; but in New York, in Pennsylvania, in Maryland, in New Jersey, and not in those States alone, they are already establishing despotisms which no spasmodic popular effort will be able to shake off. Everywhere, and at all times, however, they illustrate the truth of the old maxim of the common law, that corporations have no souls. Only in New York has any intimation yet been given of what the future may have in store for us should these great powers become mere tools in the hands of ambitious, reckless men. The system of corporate life and corporate power, as applied to industrial development, is yet in its infancy. It tends always to development, — always to consolidation, — it is ever grasping new powers, or insidiously exercising covert influence. Even now the system threatens the central government. The Erie Railway represents a weak combination compared to those which day by day are consolidating under the unsuspecting eyes of the community. A very few years more, and we shall see corporations as much exceeding the Erie and the New York Central in both ability and will for corruption as they will exceed those roads in wealth and in length of iron track. We shall see these great corporations spanning the continent from ocean to ocean, — single, consolidated lines, not connecting Albany with Buffalo, or Lake Erie with the Hudson, but uniting the Atlantic and the Pacific, and bringing New York nearer to San Francisco than Albany once was to Buffalo. Already the disconnected members of these future leviathans have built up States in the wilderness, and chosen their attorneys senators of the United States. Now their power is in its infancy; in a very few years they will re-enact, on a larger theatre and on a grander scale, with every feature magnified, the scenes which were lately witnessed on the nar-

row stage of a single State. The public corruption is the foundation on which corporations always depend for their political power. There is a natural tendency to coalition between them and the lowest strata of political intelligence and morality; for their agents must obey, not question. They exact success, and do not cultivate political morality. The lobby is their home, and the lobby thrives as political virtue decays. The ring is their symbol of power, and the ring is the natural enemy of political purity and independence. All this was abundantly illustrated in the events which have just been narrated. The existing coalition between the Erie Railway and the Tammany ring is a natural one, for the former needs votes, the latter money. This combination now controls the legislature and courts of New York; that it controls also the Executive of the State, as well as that of the city, was proved when Governor Hoffman recorded his reasons for signing the infamous Erie Directors' Bill. It is a new power, for which our language contains no name. We know what aristocracy, autocracy, democracy are; but we have no word to express government by moneyed corporations. Yet the people already instinctively seek protection against it, and look for such protection, significantly enough, not to their own legislatures, but to the single autocratic feature retained in our system of government, — the veto by the Executive. In this there is something more imperial than republican. The people have lost faith in themselves when they cease to have any faith in those whom they uniformly elect to represent them. The change that has taken place in this respect of late years in America has been startling in its rapidity. Legislation is more and more falling into contempt, and this not so much on account of the extreme ignorance manifested in it as because of the corrupt motives which are believed habitually to actuate it. Thus the influence of corporations and of class interests is steadily destroying that belief in singleness of purpose which alone enables a representative government to exist, and the community is slowly accustoming itself to look for protection, not to public opinion, but to some man in high place

and armed with great executive powers. Him they now think they can hold to some accountability. It remains to be seen what the next phase in this process of gradual development will be. History never quite repeats itself, and, as was suggested in the first pages of this narrative, the old familiar enemies may even now confront us, though arrayed in such a modern garb that no suspicion is excited. Americans are apt pupils, and among them there are probably some who have not observed Fisk and Vanderbilt and Hoffman without a thought of bettering their instructions. No successful military leader will repeat in America the threadbare experiences of Europe; — the executive power is not likely to be seized while the legislative is suppressed. The indications would now seem rather to point towards the corruption of the legislative and a quiet assumption of the executive through some combination in one vigorous hand of those influences which throughout this narrative have been seen only in conflict. As the Erie ring represents the combination of the corporation and the hired proletariat of a great city; as Vanderbilt embodies the autocratic power of Cæsarism introduced into corporate life, and as neither alone can obtain complete control of the government of the State, it, perhaps, only remains for the coming man to carry the combination of elements one step in advance, and put Cæsarism at once in control of the corporation and of the proletariat, to bring our vaunted institutions within the rule of all historic precedent.

It is not pleasant to take such views of the future; yet they are irresistibly suggested by the events which have been narrated. They seem to be in the nature of direct inferences. The only remedy lies in a renovated public opinion; but no indication of this has as yet been elicited. People did indeed, at one time, watch these Erie developments with interest, but the feeling excited was rather one of amazement than of indignation. Even where a real indignation was excited, it led to no sign of any persistent effort at reform; it betrayed itself only in aimless denunciation or in sad forebodings. The danger, however, is day by day increasing, and the period dur-

ing which the work of regeneration should begin grows always shorter. It is true that evils ever work their own cure, but the cure for the evils of Roman civilization was worked out through ten centuries of barbarism. It remains to be seen whether this people retains that moral vigor which can alone awaken a sleeping public opinion to healthy and persistent activity, or whether to us also will apply these words of the latest and best historian of the Roman republic : "What Demosthenes said of his Athenians was justly applied to the Romans of this period ; that people were very zealous for action so long as they stood round the platform and listened to proposals of reform ; but, when they went home, no one thought further of what he had heard in the market-place. However those reformers might stir the fire, it was to no purpose, for the inflammable material was wanting." *

* Mommsen, Vol. IV. p. 91, referring to the early Ciceronian period, B. C. 75.

# THE NEW YORK GOLD CONSPIRACY.*

*House of Representatives. Report, No. 31. Forty-first Congress, Second Session. Report of the Committee on Banking and Currency, in response to a Resolution of the House of Representatives, passed December 13, 1869, directing the Committee "to investigate the causes that led to the unusual and extraordinary fluctuations of Gold in the City of New York, from the 21st to the 27th of September, 1869"; accompanied by the Testimony collected by the Committee.*

THE civil war in America, with its enormous issues of depreciating currency, and its reckless waste of money and credit by the government, created a speculative mania such as the United States, with all its experience in this respect, had never before known. Not only in Broad Street, the centre of New York speculation, but far and wide throughout the Northern States, almost every man who had money at all employed a part of his capital in the purchase of stocks or of gold, of copper, of petroleum, or of domestic produce, in the hope of a rise in prices, or staked money on the expectation of a fall. To use the jargon of the street, every farmer and every shopkeeper in the country seemed to be engaged in "carrying" some favorite security "on a margin." Whoever could obtain five pounds sent it to a broker with orders to buy fifty pounds' worth of stocks, or whatever amount the broker would consent to purchase. If the stock rose, the speculator prospered; if

* From the Westminster Review, for October, 1870.

it fell until the five pounds of deposit or margin were lost, the broker demanded a new deposit, or sold the stock to protect himself. By means of this simple and smooth machinery, which differs in no essential respect from the processes of *roulette* or *rouge-et-noir*, the whole nation flung itself into the Stock Exchange, until the "outsiders," as they were called, in opposition to the regular brokers of Broad Street, represented nothing less than the entire population of the American Republic. Every one speculated, and for a time every one speculated successfully.

The inevitable reaction began when the government, about a year after the close of the war, stopped its issues and ceased borrowing. The greenback currency had for a moment sunk to a value of only 37 cents to the dollar. It is even asserted that on the worst day of all, the 11th of July, 1864, one sale of £20,000 in gold was actually made at 310, which is equivalent to about 33 cents in the dollar.* At this point, however, the depreciation stopped; and the paper which had come so near falling into entire discredit steadily rose in value, first to 50 cents, then to 60, to 70, and within the present year to more than 90 cents. So soon as the industrious part of the public felt the touch of this return to solid values, the whole fabric of fictitious wealth began to melt away under their eyes.

Thus it was not long before the so-called "outsiders," the men who speculated on their own account, and could not act in agreement or combination, began to suffer. One by one, or in great masses, they were made the prey of the larger operators; their last margins were consumed, and they dropped down to the solid level of slow, productive industry. Some lost everything; many lost still more than they had, and there are few families of ordinary connection and standing in the United States which cannot tell, if they choose, some dark story of embezzlement, or breach of trust, committed in these days. Some men, who had courage and a sense of honor,

* See Men and Mysteries of Wall Street, by James K. Medbery, pp. 250, 251.

found life too heavy for them; others went mad. But the greater part turned in silence to their regular pursuits, and accepted their losses as they could. Almost every rich American could produce from some pigeon-hole a bundle of worthless securities, and could show check-books representing the only remaining trace of margin after margin consumed in vain attempts to satisfy the insatiable broker. A year or two of incessant losses swept the weaker gamblers from the street.

But even those who continued to speculate found it necessary to change their mode of operations. Chance no longer ruled over the Stock Exchange and the gold market. The fate of a battle, the capture of a city, or the murder of a President, had hitherto been the influences which broke through the plans of the strongest combinations, and put all speculators, whether great or small, on fairly even ground; but as the period of sudden and uncontrollable disturbing elements passed away, the market fell more and more completely into the hands of cliques which found a point of adhesion in some great mass of incorporated capital. Three distinct railways, with all their enormous resources, became the property of Cornelius Vanderbilt, who, by means of their credit and capital, again and again swept millions of dollars into his pocket by a process curiously similar to gambling with loaded dice. But Vanderbilt was one of the most respectable of these great operators. The Erie Railway was controlled by Daniel Drew, and while Vanderbilt at least acted in the interests of his corporations, Drew cheated equally his corporation and the public. Between these two men and the immense incorporated power they swayed, smaller operators, one after another, were crushed to pieces, until the survivors learned to seek shelter within some clique sufficiently strong to afford protection. Speculation in this manner began to consume itself, and the largest combination of capital was destined to swallow every weaker combination which ventured to show it itself in the market.

Thus, between the inevitable effect of a currency which steadily shrank the apparent wealth of the country, and the

omnipotence of capital in the stock market, a sounder and healthier state of society began to make itself felt. Nor could the unfortunate public, which had been robbed with such cynical indifference by Drew and Vanderbilt, feel any sincere regret when they saw these two cormorants reduced to tearing each other. In the year 1867 Mr. Vanderbilt undertook to gain possession of the Erie Road, as he had already obtained possession of the New York Central, the second trunk line between New York and the West. Mr. Vanderbilt was supposed to own property to the value of some £10,000,000, all of which might be made directly available for stock operations. He bought the greater part of the Erie stock; Drew sold him all he could take, and then issued as much more as was required in order to defeat Vanderbilt's purpose. After a violent struggle, which overthrew all the guaranties of social order, Drew triumphed, and Mr. Vanderbilt abandoned the contest. The Erie corporation paid him a large sum to reimburse his alleged losses. At the same time it was agreed that Mr. Drew's accounts should be passed, and he obtained a release in full, and retired from the direction. And the Erie Road, almost exhausted by such systematic plundering, was left in the undisturbed, if not peaceful, control of Mr. Jay Gould and Mr. James Fisk, Jr., whose reign began in the month of July, 1868.

Mr. Jay Gould was a partner in the firm of Smith, Gould, & Martin, brokers, in Wall Street. He had been engaged before now in railway enterprises, and his operations had not been of a nature likely to encourage public confidence in his ideas of fiduciary relations. He was a broker, and a broker is almost by nature a gambler, perhaps the very last profession suitable for a railway manager. In character he was strongly marked by his disposition for silent intrigue. He preferred as a rule to operate on his own account, without admitting other persons into his confidence, and he seemed never to be satisfied except when deceiving every one as to his intentions. There was a reminiscence of the spider in his nature. He spun huge webs, in corners and in the dark, which were sel-

dom strong enough to resist a serious strain at the critical moment. His disposition to this subtlety and elaboration of intrigue was irresistible. It is scarcely necessary to say that he had not a conception of a moral principle. In speaking of this class of men it must be fairly assumed at the outset that they do not and cannot understand how there can be a distinction between right and wrong in matters of speculation, so long as the daily settlements are punctually effected. In this respect Mr. Gould was probably as honest as the mass of his fellows, according to the moral standard of the street; but without entering upon technical questions of roguery, it is enough to say that he was an uncommonly fine and unscrupulous intriguer, skilled in all the processes of stock-gambling, and passably indifferent to the praise or censure of society.

James Fisk, Jr., was still more original in character. He was not yet forty years of age, and had the instincts of fourteen. He came originally from Vermont, probably the most respectable and correct State in the Union, and his father had been a pedler who sold goods from town to town in his native valley of the Connecticut. The son followed his father's calling with boldness and success. He drove his huge wagon, made resplendent with paint and varnish, with four or six horses, through the towns of Vermont and Western Massachusetts; and when his father remonstrated in alarm at his reckless management, the young man, with his usual bravado, took his father into his service at a fixed salary, with the warning that he was not to put on airs on the strength of his new dignity. A large Boston firm which had supplied his goods on credit, attracted by his energy, took him into the house; the war broke out; his influence drew the firm into some bold speculations which were successful; in a few years he retired with some £20,000, which he subsequently lost. He formed a connection with Daniel Drew in New York, and a new sign, ominous of future trouble, was raised in Wall Street, bearing the names of Fisk & Belden, brokers.

Personally Mr. Fisk was coarse, noisy, boastful, ignorant; the typeof a young butcher in appearance and mind. Noth-

ng could be more striking than the contrast between him and his future associate Gould. One was small and slight in person, dark, sallow, reticent, and stealthy, with a trace of Jewish origin. The other was large, florid, gross, talkative, and obstreperous. Mr. Fisk's redeeming point was his humor, which had a strong flavor of American nationality. His mind was extraordinarily fertile in ideas and expedients, while his conversation was filled with unusual images and strange forms of speech, which were caught up and made popular by the New York press. In respect to honesty as between Gould and Fisk, the latter was, perhaps, if possible, less deserving of trust than the former. A story not without a keen stroke of satirical wit is told by him, which illustrates his estimate of abstract truth. An old woman who had bought of the elder Fisk a handkerchief which cost ninepence in the New England currency, where six shillings are reckoned to the dollar, complained to Mr. Fisk, Jr., that his father had cheated her. Mr. Fisk considered the case maturely, and gave a decision based on *a priori* principles. "No!" said he, "the old man would n't have told a lie for ninepence"; and then, as if this assertion needed some reasonable qualification, he added, "though he would have told eight of them for a dollar!" The distinction as regards the father may have been just, since the father seems to have held old-fashioned ideas as to wholesale and retail trade; but in regard to the son even this relative degree of truth cannot be predicated with any confidence, since, if the Investigating Committee of Congress and its evidence are to be believed, Mr. Fisk seldom or never speaks truth at all.

An intrigue equally successful and disreputable brought these two men into the Erie Board of Directors, whence they speedily drove their more timid predecessor Drew. In July, 1868, Gould made himself President and Treasurer of the corporation. Fisk became Comptroller. A young lawyer, named Lane, became counsel. These three directors made a majority of the Executive Committee, and were masters of Erie. The Board of Directors held no meetings. The Executive Committee was never called together, and the three men

— Fisk, Gould, and Lane — became from this time the absolute, irresponsible owners of the Erie Railway, not less than if it had been their personal property and plaything.

This property was in effect, like all the great railway corporations, an empire within a republic. It consisted of a trunk line of road 459 miles in length, with branches 314 miles in extent, or 773 miles of road in all. Its capital stock amounted to about £7,000,000. Its gross receipts exceeded £3,000,000 per annum. It employed not less than 15,000 men, and supported their families. Over all this wealth and influence, greater than that directly swayed by any private citizen, greater than is absolutely and personally controlled by most kings, and far too great for the public safety either in a democracy or in any other form of society, the vicissitudes of a troubled time placed two men in irresponsible authority; and both these men belonged to a low and degraded moral and social type. Such an elevation has been rarely seen in modern history. Even the most dramatic of modern authors, even Balzac himself, who so loved to deal with similar violent alternations of fortune, or Alexandre Dumas, with all his extravagance of imagination, never have reached a conception bolder or more melodramatic than this, nor have they ever ventured to conceive a plot so enormous, or a catastrophe so original, as was now to be developed.

One of the earliest acts of the new rulers was precisely such as Balzac or Dumas might have predicted and delighted in. They established themselves in a palace. The old offices of the Erie Railway were in the lower part of the city, among the wharves and warehouses; a situation, no doubt, convenient for business, but by no means agreeable as a residence; and the new proprietors naturally wished to reside on their property. Mr. Fisk and Mr. Gould accordingly bought a huge building of white marble, not unlike a European palace, situated about two miles from the business quarter, and containing a large theatre or opera-house. They also purchased several smaller houses adjoining it. The opera-house cost about £140,000, and a large part of the building was at once leased,

by the two purchasers, to themselves as the Erie corporation, to serve as offices. This suite of apartments was then furnished by themselves, as representing the corporation, at an expense of some £60,000, and in a style which, though called vulgar, is certainly not more vulgar than that of the President's official residence, and which would be magnificent in almost any palace in Europe. The adjoining houses were connected with the main building; and in one of these Mr. Fisk had his private apartments, with a private passage to his opera-box. He also assumed direction of the theatre, of which he became manager-in-chief. To these royal arrangements he brought tastes which have been commonly charged as the worst results of royal license. The atmosphere of the Erie offices was not supposed to be disturbed with moral prejudices; and as the opera itself supplied Mr. Fisk's mind with amusement, so the opera *troupe* supplied him with a permanent harem. Whatever Mr. Fisk did was done on an extraordinary scale.

These arrangements, however, regarded only the pleasures of the American Aladdin. In the conduct of their interests the new directors showed a capacity for large conceptions, and a vigor in the execution of their schemes, such as alarmed the entire community. At the annual election in 1868, when Gould, Fisk, and Lane, having borrowed or bought proxies for the greater part of the stock, caused themselves to be elected for the ensuing year, the respectable portion of the public throughout the country was astonished and shocked to learn that the new Board of Directors contained two names peculiarly notorious and obnoxious to honest men, — the names of William M. Tweed and Peter B. Sweeney. To English ears these commonplace, not to say vulgar, titles do not seem singularly alarming; but to every honest American they conveyed a peculiar sense of terror and disgust. The State of New York in its politics is much influenced, if not controlled, by the city of New York. The city politics are so entirely in the hands of the Democratic party as to preclude even the existence of a strong minority. The party organization centres

in a political club, held together by its patronage and the money it controls through a system of jobbery unequalled elsewhere in the world. And the Tammany Club, thus swaying the power of a small nation of several million souls, is itself ruled by William M. Tweed and Peter B. Sweeney, absolute masters of this terrible system of theft and fraud, and to American eyes the incarnation of political immorality.

The effect of this alliance was felt in the ensuing winter in the passage of a bill through the State legislature, and its signature by the Governor, abolishing the former system of annual elections of the entire board of Erie directors, and authorizing the board to classify itself in such a manner that only a portion should be changed each year. The principle of the bill was correct. Its practical effect, however, was to enable Gould and Fisk to make themselves directors for five years, in spite of any attempt on the part of the stockholders to remove them. The formality of annual re-election was spared them; and so far as the stockholders were concerned, there was no great injustice in the act. The Erie Road was in the peculiar position of being without an owner. There was no *cestui que trust*, unless the English stockholders could be called such. In America the stock was almost exclusively held for speculation, not for investment; and in the morals of Wall Street speculation means, or had almost come to mean, disregard of intrinsic value. In this case society at large was the injured party, and society knew its risk.

This step, however, was only a beginning. The Tammany ring, as it is called, exercised a power far beyond politics. Under the existing constitution of the State, the judges of the State courts are elected by the people. There are thirty-three such judges in New York, and each of the thirty-three is clothed with equity powers running through the whole State. Of these judges Tammany Hall elected several, and the Erie Railway controlled others in country districts. Each of these judges might forbid proceedings before any and all the other judges, or stay proceedings in suits already commenced. Thus the lives and the property of the public were

in the power of the new combination; and two of the city judges, Barnard and Cardozo, had already acquired a peculiarly infamous reputation as so-called "slaves to the ring," which left no question as to the depths to which their prostitution of justice would descend.

The alliance between Tammany and Erie was thus equivalent to investing Mr. Gould and Mr. Fisk with the highest attributes of sovereignty; but in order to avail themselves to the utmost of their judicial powers, they also required the ablest legal assistance. The degradation of the bench had been rapidly followed by the degradation of the bar. Prominent and learned lawyers were already accustomed to avail themselves of social or business relations with judges to forward private purposes. One whose partner might be elevated to the bench was certain to be generally retained in cases brought before this special judge; and litigants were taught by experience that a retainer in such cases was profitably bestowed. Others found a similar advantage resulting from known social relations with the court. The debasement of tone was not confined to the lower ranks of advocates; and it was probably this steady demoralization of the bar which made it possible for the Erie ring to obtain the services of Mr. David Dudley Field as its legal adviser. Mr. Field, a gentleman of European reputation, in regard to which he is understood to be peculiarly solicitous, was an eminent law reformer, author of the New York Code, delegate of the American Social Science Association to the European International Congress, and asserted by his partner, Mr. Shearman, in evidence before a committee of the New York legislature, to be a man of quixotic sense of honor. Mr. Shearman himself, a gentleman of English parentage, had earned public gratitude by arraigning and deploring, with unsurpassed courage and point, the condition of the New York judiciary, in an admirable essay which will be found in the North American Review for July, 1867. The value of Mr. Field's services to Messrs. Fisk and Gould was not to be measured even by the enormous fees their generosity paid him. His power over

certain judges became so absolute as to impress the popular imagination; and the gossip of Wall Street insists that he has a silken halter round the neck of Judge Barnard, and a hempen one round that of Cardozo. It is certain that he who had a year before threatened Barnard on his own bench with impeachment now appeared in the character of Barnard's master, and issued as a matter of course the edicts of his court.

One other combination was made by the Erie managers to extend their power, and this time it was credit that was threatened. They bought a joint-stock bank in New York City, with a capital of £200,000. The assistance thus gained was purchased at a very moderate price, since it was by no means represented by the capital. The great cliques and so-called "operators" of Wall Street and Broad Street carry on their transactions by a system of credits and clearing-houses with a very limited use of money. The banks certify their checks, and the certified checks settle all balances. Nominally and by law the banks only certify to the extent of *bona fide* deposits, but in reality the custom of disregarding the strict letter of the law is not unknown, and in regard to the bank in question, the Comptroller of the Currency, an officer of the National Treasury, testifies that on an examination of its affairs in April, 1869, out of fifteen checks deposited in its hands as security for certifications made by it, selected at hazard for inquiry, and representing a nominal value of £300,000, three only were good. The rest represented accommodation extended to brokers and speculators without security. As an actual fact it is in evidence that this same bank on Thursday, September 24, 1869, certified checks to the amount of nearly £1,500,000 for Mr. Gould alone. What sound security Mr. Gould deposited against this mass of credit may be left to the imagination. His operations, however, were not confined to this bank alone, although this was the only one owned by the ring.

Thus Mr. Gould and Mr. Fisk created a combination more powerful than any that has been controlled by mere private

citizens in America or in Europe since society for self-protection established the supreme authority of the judicial name. They exercised the legislative and the judicial powers of the State; they possessed almost unlimited credit, and society was at their mercy. One authority alone stood above them, beyond their control; and this was the distant but threatening figure of the National Government.

Nevertheless, powerful as they were, the Erie managers were seldom in funds. The huge marble palace in which they lived, the theatre which they supported, the reckless bribery and profusion of management by which they could alone maintain their defiance of public opinion, the enormous schemes for extending their operations into which they rushed with utter recklessness, all required greater resources than could be furnished even by the wholesale plunder of the Erie Road. They were obliged from time to time to issue from their castle and harry the industrious public or their brother freebooters. The process was different from that known to the dark ages, but the objects and the results were equally robbery. At one time Mr. Fisk is said to have ordered heavy speculative sales of stock in an express company which held a contract with the Erie Railway. The sales being effected, the contract was declared annulled. The stock naturally fell, and Mr. Fisk realized the difference. He then ordered heavy purchases, and having renewed the contract the stock rose again, and Mr. Fisk a second time swept the street.* In the summer and autumn of 1869 the two managers issued and sold 235,000 new shares of Erie stock, or nearly as much as its entire capital when they assumed power in July, 1868. With the aid of the money thus obtained, they succeeded in withdrawing about £2,500,000 in currency from circulation at the very moment of the year when currency was most in demand in order to harvest the crops. For weeks the whole nation writhed and quivered under the torture of this modern rack, until the national government itself was obliged to interfere and threaten a sudden opening of the treasury. But whether the Erie

* Men and Mysteries of Wall Street, p. 168.

speculators operated for a rise or operated for a fall, whether they bought or sold, and whether they were engaged in manipulating stocks, or locking up currency, or cornering gold, they were always a public nuisance and scandal.

In order to explain the operation of a so-called corner in gold to ordinary readers with the least possible use of slang or technical phrases, two preliminary statements are necessary. In the first place, it must be understood that the supply of gold immediately available for transfers is limited within distinct bounds in America. New York and the country behind it contain an amount usually estimated at about £4,000,000. The national government commonly holds from £15,000,000 to £20,000,000, which may be thrown bodily on the market if the President orders it. To obtain gold from Europe or other sources requires time.

In the second place, gold in America is a commodity bought and sold like stocks in a special market or gold-room which is situated next the Stock Exchange in Broad Street and is practically a part of it. In gold as in stocks, the transactions are both real and speculative. The real transactions are mostly purchases or loans made by importers who require coin to pay customs on their imports. This legitimate business is supposed to require from £1,000,000 to £1,500,000 per day. The speculative transactions are mere wagers on the rise or fall of price, and neither require any actual transfer of gold, nor even imply its existence, although in times of excitement hundreds of millions nominally are bought, sold, and loaned.

Under the late administration Mr. McCulloch, then Secretary of the Treasury, had thought it his duty at least to guarantee a stable currency, although Congress forbade him to restore the gold standard. During four years gold had fluctuated little, and principally from natural causes, and the danger of attempting to create an artificial scarcity in it had prevented the operators from trying an experiment which would have been sure to irritate the government. The financial policy of the new administration was not so definitely fixed, and the success of a speculation would depend on the

action of Mr. Boutwell, the new secretary, whose direction was understood to have begun by a marked censure on the course pursued by his predecessor.

Of all financial operations, cornering gold is the most brilliant and the most dangerous, and possibly the very hazard and splendor of the attempt were the reasons of its fascination to Mr. Jay Gould's fancy. He dwelt upon it for months, and played with it like a pet toy. His fertile mind even went so far as to discover that it would prove a blessing to the community, and on this ingenious theory, half honest and half fraudulent, he stretched the widely extended fabric of the web in which all mankind was to be caught. This theory was in itself partially sound. Starting from the principle that the price of grain in New York is regulated by the price in London and is not affected by currency fluctuations, Mr. Gould argued that if it were possible to raise the premium on gold from thirty to forty cents at harvest-time, the farmers' grain would be worth $1.40 instead of $1.30, and as a consequence the farmer would hasten to send all his crop to New York for export, over the Erie Railway, which was sorely in need of freights. With the assistance of another gentleman, Mr. Gould calculated the exact premium at which the Western farmer would consent to dispose of his grain, and thus distance the three hundred sail which were hastening from the Danube to supply the English market. Gold, which was then heavy at 34, must be raised to 45.

This clever idea, like all the other ideas of these gentlemen of Erie, seems to have had the single fault of requiring that some one, somewhere, should be swindled. The scheme was probably feasible; but sooner or later the reaction from such an artificial stimulant must have come, and whenever it came some one must suffer. Nevertheless, Mr. Gould probably argued that so long as the farmer got his money, the Erie Railway its freights, and he himself his small profits on the gold he bought, it was of little consequence who else might be injured; and, indeed, by the time the reaction came, and gold was ready to fall as he expected, Mr. Gould would probably

have been ready to assist the process by speculative sales in order to enable the Western farmer to buy his spring goods cheap as he had sold his autumn crops dear. He himself was equally ready to buy gold cheap and sell it dear on his private account; and as he proposed to bleed New York merchants for the benefit of the Western farmer, so he was willing to bleed Broad Street for his own. The patriotic object was, however, the one which for obvious reasons Mr. Gould preferred to put forward most prominently, and on the strength of which he hoped to rest his ambitious structure of intrigue.

In the operation of raising the price of gold from 133 to 145, there was no great difficulty to men who controlled the resources of the Erie Railway. Credit alone was needed, and of credit Mr. Gould had an unlimited supply. The only serious danger lay in the possible action of the national government, which had not taken the same philanthropic view of the public good as was peculiar to the managers of Erie. Secretary Boutwell, who should have assisted Mr. Gould in "bulling" gold, was gravely suspected of being a bear, and of wishing to depress the premiums to nothing. If he were determined to stand in Mr. Gould's path, it was useless even for the combined forces of Erie and Tammany to jostle against him; and it was therefore essential that Mr. Gould should control the government itself, whether by fair means or foul, by persuasion or by purchase. He undertook the task; and now that his proceedings in both directions have been thoroughly drawn into light, it is well worth while for the public to see how dramatic and how artistically admirable a conspiracy in real life may be, when slowly elaborated from the subtle mind of a clever intriguer, and carried into execution by a band of unshrinking scoundrels.

The first requisite for Mr. Gould's purpose was some channel of direct communication with the President; and here he was peculiarly favored by chance. Mr. Abel Rathbone Corbin, formerly lawyer, editor, speculator, lobby-agent, familiar, as he claims, with everything, had succeeded, during his varied career, in accumulating from one or another of his hazardous

pursuits a comfortable fortune, and he had crowned his success, at the age of sixty-seven or thereabouts, by contracting a marriage with General Grant's sister, precisely at the moment when General Grant was on the point of reaching the highest eminence possible to an American citizen. To say that Mr. Corbin's moral dignity had passed absolutely pure through the somewhat tainted atmosphere in which his life had been spent, would be flattering him too highly; but at least he was now no longer engaged in any active occupation, and he lived quietly in New York, watching the course of public affairs, and remarkable for an eminent respectability which became the President's brother-in-law. Mr. Gould enjoyed a slight acquaintance with Mr. Corbin, and he proceeded to improve it. He assumed, and he asserts that he really felt, a respect for Mr. Corbin's shrewdness and sagacity. It is amusing to observe that Mr. Corbin claims to have first impressed the famous crop theory on Mr. Gould's mind; while Mr. Gould testifies that he himself indoctrinated Mr. Corbin with this idea, which became a sort of monomania with the President's brother-in-law, who soon began to preach it to the President himself. On the 15th of June, 1869, the President came to New York, and was there the guest of Mr. Corbin, who urged Mr. Gould to call and pay his respects to the Chief Magistrate. Mr. Gould had probably aimed at precisely this result. He called; and the President of the United States not only listened to the president of Erie, but accepted an invitation to Mr. Fisk's theatre, sat in Mr. Fisk's private box, and the next evening became the guest of these two gentlemen on their magnificent Newport steamer, while Mr. Fisk, arrayed, as the newspapers reported, "in a blue uniform, with a broad gilt cap-band, three silver stars on his coat-sleeve, lavender gloves, and a diamond breast-pin as large as a cherry, stood at the gangway, surrounded by his aids, bestarred and bestriped like himself," and welcomed his distinguished friend.

It had been already arranged that the President should on this occasion be sounded in regard to his financial policy; and

when the selected guests — among whom were Mr. Gould, Mr. Fisk, and others — sat down at nine o'clock to supper, the conversation was directed to the subject of finance. "Some one," says Mr. Gould, "asked the President what his view was." The "some one" in question was, of course, Mr. Fisk, who alone had the impudence to put such an inquiry. The President bluntly replied, that there was a certain amount of fictitiousness about the prosperity of the country, and that the bubble might as well be tapped in one way as another. The remark was fatal to Mr. Gould's plans, and he felt it, in his own words, as a wet blanket.

Meanwhile the post of assistant-treasurer at New York had become vacant, and it was a matter of interest to Mr. Gould that some person friendly to himself should occupy this position, which, in its relations to the public, is second in importance only to the secretaryship of the treasury itself. Mr. Gould consulted Mr. Corbin, and Mr. Corbin suggested the name of General Butterfield, — a former officer in the volunteer army. The appointment was not a wise one; nor does it appear in evidence by what means Mr. Corbin succeeded in bringing it about. There is a suggestion that he used Mr. A. T. Stewart, the wealthy importer, as his instrument for the purpose; but whatever the influence may have been, Mr. Corbin appears to have set it in action, and General Butterfield entered upon his duties towards the 1st of July.

The elaborate preparations thus made show that some large scheme was never absent from Mr. Gould's mind, although between the months of May and August he made no attempt to act upon the markets. But between the 20th of August and the 1st of September, in company with Messrs. Woodward and Kimber, two large speculators, he made what is known as a pool, or combination, to raise the premium on gold, and some ten or fifteen millions were bought, but with very little effect on the price. The tendency of the market was downwards, and it was not easily counteracted. Perhaps under ordinary circumstances he might have now abandoned his project; but an incident suddenly occurred which seems to have drawn him headlong into the boldest operations.

Whether the appointment of General Butterfield had any share in strengthening Mr. Gould's faith in Mr. Corbin's secret powers does not appear in evidence, though it may readily be assumed as probable. At all events, an event now took place which would have seemed to authorize an unlimited faith in Mr. Corbin, as well as to justify the implicit belief of an Erie treasurer in the corruptibility of all mankind. The unsuspicious President again passed through New York, and came to breakfast at Mr. Corbin's house on the 2d of September. He saw no one but Mr. Corbin while there, and the same evening at ten o'clock departed for Saratoga. Mr. Gould declares, however, that he was told by Mr. Corbin that the President, in discussing the financial situation, had shown himself a convert to the Erie theory about marketing the crops, and had "stopped in the middle of a conversation in which he had expressed his views, and written a letter" to Secretary Boutwell. This letter is not produced; but Secretary Boutwell testifies as follows in regard to it: —

"I think on the evening of the 4th of September I received a letter from the President dated at New York, as I recollect it; I am not sure where it is dated. I have not seen the letter since the night I received it. I think it is now in my residence in Groton. In that letter he expressed an opinion that it was undesirable to force down the price of gold. He spoke of the importance to the West of being able to move their crops. His idea was that if gold should fall, the West would suffer, and the movement of the crops would be retarded. The impression made on my mind by the letter was that he had rather a strong opinion to that effect. . . . . Upon the receipt of the President's letter on the evening of the 4th of September, I telegraphed to Judge Richardson [Assistant Secretary at Washington] this despatch: 'Send no order to Butterfield as to sales of gold until you hear from me.'"

Mr. Gould had therefore succeeded in reversing the policy of the national government; but this was not all. He knew what the government would do before any officer of the government knew it. Mr. Gould was at Corbin's house on the 2d of September; and although the evidence of both these gentlemen is very confused on this point, the inference is inevita-

ble that Gould saw Corbin privately, unknown to the President, within an hour or two after this letter to Mr. Boutwell was written, and that it was at this interview, while the President was still in the house, that Mr. Corbin gave him the information about the letter; perhaps showed him the letter itself. Then followed a transaction worthy of the French stage. Mr. Corbin's evidence gives his own account of it: —

"On the 2d of September (referring to memoranda) Mr. Gould offered to let me have some of the gold he then possessed. . . . . He spoke to me as he had repeatedly done before, about taking a certain amount of gold owned by him. I finally told Mr. Gould that for the sake of a lady, my wife, I would accept of $500,000 of gold for her benefit, as I shared his confidence that gold would rise. . . . . He afterwards insisted that I should take a million more, and I did so on the same conditions for my wife. He then sent me this paper."

The paper in question is as follows: —

"Smith, Gould, Martin, & Co., Bankers,
11 Broad Street, New York, September 2, 1869.

"Mr. ——

"Dear Sir: we have bought for your account and risk —
500,000, gold, 132, R.
1,000,000, gold, 133⅝, R.
which we will carry on demand with the right to use.

"Smith, Gould, Martin, & Co."

This memorandum meant that for every rise of one per cent in the price of gold Mr. Corbin was to receive £3,000, and his name nowhere to appear. If the inference is correct that Gould had seen Corbin in the morning and had learned from him what the President had written, it is clear that he must have made his bargain on the spot, and then going directly to the city, he must in one breath have ordered this memorandum to be made out and large quantities of gold to be purchased, before the President had allowed the letter to leave Mr. Corbin's house.

No time was lost. On this same afternoon, Mr. Gould's brokers bought large amounts in gold. One testifies to buying $1,315,000 at 134¼. On the 3d the premium was forced

up to 36 ; on the 4th, when Mr. Boutwell received his letter, it had risen to 37. Here, however, Mr. Gould seems to have met a check, and he describes his own position in nervous Americanisms as follows : —

"I did not want to buy so much gold. In the spring I put gold up from 32 to 38 and 40, with only about seven millions. But all these fellows went in and sold short, so that in order to keep it up I had to buy, or else to back down and show the white feather. They would sell it to you all the time. I never intended to buy more than four or five millions of gold, but these fellows kept purchasing it on, and I made up my mind that I would put it up to 40 at one time. . . . . We went into it as a commercial transaction, and did not intend to buy such an amount of gold. I was forced into it by the bears selling out. They were bound to put it down. I got into the contest. All these other fellows deserted me like rats from a ship. Kimber sold out and got short. . . . . He sold out at 37. He got short of it, and went up "( or, in English, he failed).

It was unfortunate that the bears would not consent to lie still and be flayed, but this was unquestionably the fact. They had the great operators for once at a disadvantage, and they were bent on revenge. Mr. Gould's position was very hazardous. When Mr. Kimber sold out at 37, which was probably on the 7th of September, the market broke ; and on the 8th the price fell back to 35. Nor was this all. At the same moment, when the "pool" was ended by Mr. Kimber's desertion, Mr. Corbin, with his eminent shrewdness and respectability, told Mr. Gould "that gold had gone up to 37," and that he "should like to have this matter realized," which was equivalent to saying that he wished to be paid something on account. This was on the 6th ; and Gould was obliged this same day to bring him a check for £5,000, drawn to the order of Jay Gould, and indorsed in blank by him with a touching regard for Mr. Corbin's modest desire not to have his name appear. There are few financiers in the world who will not agree that this transaction does great credit to Mr. Corbin's sagacity. It indicates at least that he was acquainted with the men he dealt with. Undoubtedly it placed Mr. Gould in a difficult position ; but as Mr. Gould already held some fifteen

millions of gold and needed Mr. Corbin's support, he preferred to pay £5,000 outright rather than allow Corbin to throw his gold on the market. Yet the fabric of Gould's web had now been so seriously injured that, for a whole week, from the 8th to the 15th of September, he was at a loss what to do, unable to advance and equally unable to retreat without very severe losses. He sat at his desk in the opera-house, silent as usual, and tearing little slips of paper which he threw on the floor in his abstraction, while he revolved new combinations in his mind.

Down to this moment Mr. James Fisk, Jr., has not appeared in the affair. Gould had not taken him into his confidence; and it was not until after the 10th of September that Gould appears to have decided that there was nothing else to be done. Fisk was not a safe ally in so delicate an affair, but apparently there was no choice. Gould approached him; and, as usual, his touch was like magic. Mr. Fisk's evidence begins here, and may be believed when very strongly corroborated:

"Gold having settled down to 35, and I not having cared to touch it, he was a little sensitive on the subject, feeling as if he would rather take his losses without saying anything about it. . . . . One day he said to me, 'Don't you think gold has got to the bottom?' I replied that I did not see the profit in buying gold unless you have got into a position where you can command the market. He then said he had bought quite a large amount of gold, and I judged from his conversation that he wanted me to go into the movement and help strengthen the market. Upon that I went into the market and bought. I should say that was about the 15th or 16th of September. I bought at that time about seven or eight millions, I think."

The market responded slowly to these enormous purchases; and on the 16th the clique was still struggling to recover its lost ground.

Meanwhile Mr. Gould had placed another million and a half of gold to the account of General Butterfield, and notified him of the purchase. So Mr. Gould swears in spite of General Butterfield's denial. The date of this purchase is not fixed. Through Mr. Corbin a notice was also sent by Gould about the

middle of September to the President's private secretary, General Porter, informing him that half a million was placed to his credit. General Porter instantly wrote to repudiate the purchase, but it does not appear that Butterfield took any notice of Gould's transaction on his account. On the 10th of September the President had again come to New York, where he remained his brother-in-law's guest till the 13th; and during this visit Mr. Gould appears again to have seen him, although Mr. Corbin avers that on this occasion the President intimated his wish to the servant that this should be the last time Mr. Gould obtained admission. "Gould was always trying to get something out of him," he said; and if he had known how much Mr. Gould had succeeded in getting out of him, he would have admired the man's genius, even while shutting the door in his face. On the morning of the 13th the President set out on a journey to the little town of Washington, situated among the mountains of Western Pennsylvania, where he was to remain a few days. Mr. Gould, who now consulted Mr. Corbin regularly every morning and evening, was still extremely nervous in regard to the President's policy; and as the crisis approached, this nervousness led him into the fatal blunder of doing too much. The bribe offered to Porter was a grave mistake, but a greater mistake yet was made by pressing Mr. Corbin's influence too far. He induced Mr. Corbin to write an official article for the New York press on the financial policy of the government, an article afterwards inserted in the New York Times through the kind offices of Mr. James McHenry, and he also persuaded or encouraged Mr. Corbin to write a letter directly to the President himself. This letter, written on the 17th under the influence of Gould's anxiety, was instantly sent away by a special messenger of Fisk's to reach the President before he returned to the capital. The messenger carried also a letter of introduction to General Porter, the private secretary, in order to secure the personal delivery of this important despatch.

We have now come to the week which was to witness the explosion of all this elaborately constructed mine. On Mon-

day, the 20th, gold again rose. Throughout Tuesday and Wednesday Fisk continued to purchase without limit, and forced the price up to 40. At this time Gould's firm of Smith, Gould, & Martin, through which the operation was conducted, had purchased some $50,000,000; and yet the bears went on selling, although they could only continue the contest by borrowing Gould's own gold. Gould, on the other hand, could no longer sell and clear himself, for the very reason that the sale of $50,000,000 would have broken the market to noth ing. The struggle had become intense. The whole country was looking on with astonishment at the battle between the bulls and the bears. All business was deranged, and all values unsettled. There were indications of a panic in the stock market; and the bears in their emergency were vehemently pressing the government to intervene. Gould now wrote to Mr. Boutwell a letter so inconceivably impudent that it indicates desperation and entire loss of his ordinary coolness. He began: —

"Sir, — There is a panic in Wall Street, engineered by a bear combination. They have withdrawn currency to such an extent that it is impossible to do ordinary business. The Erie Company requires eight hundred thousand dollars to disburse. . . . . Much of it in Ohio, where an exciting political contest is going on, and where we have about ten thousand employed, and the trouble is charged on the administration. . . . . Cannot you, consistently, increase your line of currency?"

From a friend such a letter would have been an outrage; but from a member of the Tammany ring, the principal object of detestation to the government, such a threat or bribe — whichever it may be called — was incredible. Mr. Gould was, in fact, at his wits' end. He dreaded a panic, and he felt that it could no longer be avoided.

The scene now shifts for a moment to the distant town of Washington, among the hills of Western Pennsylvania. On the morning of the 19th of September, President Grant and his private secretary, General Porter, were playing croquet on the grass, when Fisk's messenger, after twenty-four hours of

travel by rail and carriage, arrived at the house, and sent in to ask for General Porter. When the President's game was ended, General Porter came, received his own letter from Corbin, and called the President, who entered the room and took his brother-in-law's despatch. He then left the room, and after some ten or fifteen minutes' absence returned. The messenger, tired of waiting, then asked, "Is it all right?" "All right," replied the President; and the messenger hastened to the nearest telegraph station, and sent word to Fisk, "Delivered; all right."

The messenger was, however, altogether mistaken. Not only was all not right, but all was going hopelessly wrong. The President, it appears, had at the outset supposed the man to be an ordinary post-office agent, and the letter an ordinary letter which had arrived through the post-office. Nor was it until Porter asked some curious question as to the man, that the President learned of his having been sent by Corbin merely to carry this apparently unimportant letter of advice. The President's suspicions were at once excited; and the same evening, at his request, Mrs. Grant wrote a hurried note to Mrs. Corbin, telling her how greatly the President was distressed at the rumor that Mr. Corbin was speculating in Wall Street, and how much he hoped that Mr. Corbin would "instantly disconnect himself with anything of that sort."

This letter, subsequently destroyed or said to have been destroyed by Mrs. Corbin, arrived in New York on the morning of Wednesday the 22d, the same day on which Gould and his enemies the bears were making their simultaneous appeals to Secretary Boutwell. Mrs. Corbin was greatly excited and distressed by her sister-in-law's language. She at once carried the letter to her husband, and insisted that he should instantly abandon his interest in the gold speculation. Mr. Corbin, although he considered the scruples of his wife and her family to be highly absurd, assented to her wish; and when Mr. Gould came that evening as usual, with $50,000,000 of gold on his hands, and extreme anxiety on his mind, Corbin read to him two letters: the first, written by Mrs. Grant to Mrs.

Corbin; the second, written by Mr. Corbin to President Grant, assuring him that he had not a dollar of interest in gold. The assurance of this second letter was, at any sacrifice, to be made good.

Mr. Corbin proposed that Mr. Gould should give him a check for £20,000, and take his $1,500,000 off his hands. A proposition more calmly impudent than this can scarcely be imagined. Gould had already paid Corbin £5,000, and Corbin asked for £20,000 more, at the very moment when it was clear that the £5,000 he had received had been given him under a misunderstanding of his services. He even had the impudence to represent himself as doing Gould a favor by letting him have a million and a half more gold at the highest market price, at a time when Gould had fifty millions which it was clear he must sell or be ruined. What Gould might, under ordinary circumstances, have replied, may be imagined; but at this moment he could say nothing. Corbin had but to show this note to a single broker in Wall Street, and the whole fabric of Gould's speculation would have fallen to pieces. Gould asked for time and went away. He consulted no one. He gave Fisk no hint of what had happened. The next morning he returned to Corbin, and made him the following offer: —

"'Mr. Corbin, I cannot give you anything if you will go out. If you will remain in, and take the chances of the market, I will give you my check [for £20,000].' 'And then,' says Mr. Corbin, 'I did what I think it would have troubled almost any other business man to consent to do, — refuse one hundred thousand dollars on a rising market. If I had not been an old man married to a middle-aged woman, I should have done it (of course with her consent) just as sure as the offer was made. I said, 'Mr. Gould, my wife says "No!" Ulysses thinks it wrong, and that it ought to end.' So I gave it up. . . . . He looked at me with an air of severe distrust, as if he was afraid of treachery in the camp. He remarked, 'Mr. Corbin, I am undone if that letter gets out.' . . . . He stood there for a little while looking very thoughtful, exceedingly thoughtful. He then left and went into Wall Street, . . . . and my impression is that he it was, and not the government, that broke that market.'"

Mr. Corbin was right; throughout all these transactions his insight into Mr. Gould's character was marvellous.

It was the morning of Thursday, the 3d; Gould and Fisk went to Broad Street together, but as usual Gould was silent and secret, while Fisk was noisy and communicative. There was now a complete separation in their movements. Gould acted entirely through his own firm of Smith, Gould, & Martin, while Fisk operated principally through his old partner, Belden. One of Smith's principal brokers testifies: —

"'Fisk never could do business with Smith, Gould, & Martin very comfortably. They would not do business for him. It was a very uncertain thing of course where Fisk might be. He is an erratic sort of genius. I don't think anybody would want to follow him very long. I am satisfied that Smith, Gould, & Martin controlled their own gold, and were ready to do as they pleased with it without consulting Fisk. I do not think there was any general agreement. . . . . None of us who knew him cared to do business with him. I would not have taken an order from him nor had anything to do with him.' Belden was considered a very low fellow. 'I never had anything to do with him or his party,' said one broker employed by Gould. 'They were men I had a perfect detestation of; they were no company for me. I should not have spoken to them at all under any ordinary circumstances.' Another says, 'Belden is a man in whom I never had any confidence in any way. For months before that, I would not have taken him for a gold transaction.'"

And yet Belden bought millions upon millions of gold. He himself says he had bought twenty millions by this Thursday evening, and this without capital or credit except that of his brokers. Meanwhile Gould, on reaching the city, had at once given secret orders to sell. From the moment he left Corbin, he had but one idea, which was to get rid of his gold as quietly as possible. "I purchased merely enough to make believe I was a bull," says Gould. This double process continued all that afternoon. Fisk's wild purchases carried the price up to 144, and the panic in the street became more and more serious as the bears realized the extremity of their danger. No one can tell how much gold which did not exist they had con-

tracted to deliver or pay the difference in price. One of the clique brokers swears that on this Thursday evening the street had sold the clique one hundred and eighteen millions of gold, and every rise of one per cent on this sum implied a loss of more than £200,000 to the bears. Naturally the terror was extreme, for half Broad Street and thousands of speculators would have been ruined if compelled to settle gold at 150 which they had sold at 140. It need scarcely be said that by this time nothing more was heard in regard to philanthropic theories of benefit to the Western farmer.

Mr. Gould's feelings can easily be imagined. He knew that Fisk's reckless management would bring the government upon his shoulders, and he knew that unless he could sell his gold before the order came from Washington he would be a ruined man. He knew, too, that Fisk's contracts must inevitably be repudiated. This Thursday evening he sat at his desk in the Erie offices at the opera-house, while Fisk and Fisk's brokers chattered about him.

"I was transacting my railway business. I had my own views about the market, and my own fish to fry. I was all alone, so to speak, in what I did, and I did not let any of those people know exactly how I stood. I got no ideas from anything that was said there. I had been selling gold from 35 up all the time, and I did not know till the next morning that there would probably come an order about twelve o'clock to sell gold."

He had not told Fisk a word in regard to Corbin's retreat, nor his own orders to sell.

When the next day came, Gould and Fisk went together to Broad Street, and took possession of the private back office of a principal broker, "without asking the privilege of doing so," as the broker observes in his evidence. The first news brought to Gould was a disaster. The government had sent three men from Washington to examine the bank which Gould owned, and the bank sent word to Mr. Gould that it feared to certify for him as usual, and was itself in danger of a panic, caused by the presence of officers, which created distrust of the bank. It barely managed to save itself. Gould took the

information silently, and his firm redoubled sales of gold. His partner, Smith, gave the orders to one broker after another, — "Sell ten millions!" "The order was given as quick as a flash, and away he went," says one of these men. "I sold only eight millions." "Sell, sell, sell! do nothing but sell! — only don't sell to Fisk's brokers," were the orders which Smith himself acknowledges. In the gold-room Fisk's brokers were shouting their rising bids, and the packed crowd grew frantic with terror and rage as each successive rise showed their increasing losses. The wide streets outside were thronged with excited people; the telegraph offices were overwhelmed with messages ordering sales or purchases of gold or stocks; and the whole nation was watching eagerly to see what the result of this convulsion was to be. All trade was stopped, and even the President felt that it was time to raise his hand. No one who has not seen the New York gold-room can understand the spectacle it presented; now a perfect pandemonium, now silent as the grave. Fisk, in his dark back office across the street, with his coat off, swaggered up and down, "a big cane in his hand," and called himself the Napoleon of Wall Street. He really believed that he directed the movement, and while the street outside imagined that he and Gould were one family, and that his purchases were made for the clique, Gould was silently flinging away his gold at any price he could get for it.

Whether Fisk really expected to carry out his contract, and force the bears to settle, or not, is doubtful; but the evidence seems to show that he was in earnest, and felt sure of success. His orders were unlimited. "Put it up to 150," was one which he sent to the gold-room. Gold rose to 150. At length the bid was made — "160 for any part of five millions," and no one any longer dared take it. "161 for five millions," — "162 for five millions." No answer was made, and the offer was repeated, — "162 for any part of five millions." A voice replied, "Sold one million at 62." The bubble suddenly burst, and within fifteen minutes, amid an excitement without parallel even in the wildest excitements of the war, the clique

brokers were literally swept away, and left struggling by themselves, bidding still 160 for gold in millions which no one would any longer take their word for; while the premium sank rapidly to 135. A moment later the telegraph brought from Washington the government order to sell, and the result was no longer possible to dispute. Mr. Fisk had gone too far, while Mr. Gould had secretly weakened the ground under his feet.

Gould, however, was saved. His fifty millions were sold; and although no one yet knows what his gains or losses may have been, his firm was now able to meet its contracts and protect its brokers. Fisk was in a very different situation. So soon as it became evident that his brokers would be unable to carry out their contracts, every one who had sold gold to them turned in wrath to Fisk's office. Fortunately for him it was protected by armed men whom he had brought with him from his castle of Erie; but nevertheless the excitement was so great that both Mr. Fisk and Mr. Gould thought it best to retire as rapidly as possible by a back entrance leading into another street, and to seek the protection of the opera-house. There nothing but an army could disturb them; no civil mandate was likely to be served without their permission within these walls, and few men would care to face Fisk's ruffians in order to force an entrance.

The subsequent winding up of this famous conspiracy may be stated in few words. But no account could possibly be complete which failed to reproduce in full the story of Mr. Fisk's last interview with Mr. Corbin, as told by Fisk himself.

"I went down to the neighborhood of Wall Street, Friday morning, and the history of that morning you know. When I got back to our office, you can imagine I was in no enviable state of mind, and the moment I got up street that afternoon I started right round to old Corbin's to rake him out. I went into the room, and sent word that Mr. Fisk wanted to see him in the dining-room. I was too mad to say anything civil, and when he came into the room, said I, 'You damned old scoundrel, do you know what you have done here, you and your people?' He began to wring his hands, and, 'Oh!' he says, 'this is a horrible position. Are you ruined?' I said I did n't know whether I was or not; and I asked him again

if he knew what had happened? He had been crying, and said he had just heard; that he had been sure everything was all right; but that something had occurred entirely different from what he had anticipated. Said I, 'That don't amount to anything; we know that gold ought not to be at 31, and that it would not be but for such performances as you have had this last week; you know damned well it would not if you had not failed.' I knew that somebody had run a saw right into us, and said I, 'This whole damned thing has turned out just as I told you it would.' I considered the whole party a pack of cowards, and I expected that when we came to clear our hands they would sock it right into us. I said to him, 'I don't know whether you have lied or not, and I don't know what ought to be done with you.' He was on the other side of the table, weeping and wailing, and I was gnashing my teeth. 'Now,' he says, 'you must quiet yourself.' I told him I did n't want to be quiet. I had no desire to ever be quiet again, and probably never should be quiet again. He says, 'But, my dear sir, you will lose your reason.' Says I, 'Speyers [a broker employed by him that day] has already lost his reason; reason has gone out of everybody but me.' I continued, 'Now what are you going to do? You have got us into this thing, and what are you going to do to get out of it?' He says, 'I don't know. I will go and get my wife.' I said, 'Get her down here!' The soft talk was all over. He went up stairs and they returned, tottling into the room, looking older than Stephen Hopkins. His wife and he both looked like death. He was tottling just like that. [Illustrated by a trembling movement of his body.] I have never seen him from that day to this."

This is sworn evidence before a committee of Congress; and its humor is perhaps the more conspicuous, because there is every reason to believe that there is not a word of truth in the story from beginning to end. No such interview ever occurred, except in the unconfined apartments of Mr. Fisk's imagination. His own previous statements make it certain that he was not at Corbin's house at all that day, and that Corbin did come to the Erie offices that evening, and again the next morning. Corbin himself denies the truth of the account without limitation; and adds, that when he entered the Erie offices the next morning Fisk was there. "I asked him how Mr. Gould felt after the great calamity of the day before." He remarked, "O, he has no courage at all.

He has sunk right down. There is nothing left of him but a heap of clothes and a pair of eyes." The internal evidence of truth in this anecdote would support Mr. Corbin against the world.*

In regard to Mr. Gould, Fisk's graphic description was probably again inaccurate. Undoubtedly the noise and scandal of the moment were extremely unpleasant to this silent and impenetrable intriguer. The city was in a ferment, and the whole country pointing at him with wrath. The machinery of the gold exchange had broken down, and he alone could extricate the business community from the pressing danger of a general panic. He had saved himself, it is true; but in a manner which could not have been to his taste. Yet his

* Mr. Fisk to the Editor of the Sun:—

Erie Railway Company, Comptroller's Office,
New York, October 4, 1869.

To the Editor of the Sun.

Dear Sir,—. . . . Mr. Corbin has constantly associated with me; . . . . *he spent more than an hour with me in the Erie Railway Office on the afternoon of Saturday, September 25th, the day after the gold panic.* . . . . I enclose you a few affidavits which will give you further information concerning this matter.

I remain your obedient servant,

James Fisk, Jr.

*Affidavit of Charles W. Pollard.*

"State of New York, City and County of New York, ss.

"C. W. Pollard, being duly sworn, says: 'I have frequently been the bearer of messages between Mr. James Fisk, Jr., and Mr. Abel R. Corbin, brother-in-law of President Grant. . . . . Mr. Corbin called on me at the Erie building on Thursday, 23d September, 1869, telling me he came to see how Messrs. Fisk and Gould were getting along. . . . . He called again on Friday, the following day, at about noon; appeared to be greatly excited and said he feared *we* should lose a great deal of money. The following morning, Saturday, September 25, Mr. Fisk told me to take his carriage and call upon Mr. Corbin and say to him that he and Mr. Gould would like to see him (Corbin) at their office. I called and saw Mr. Corbin. He remarked upon greeting me: "How does Mr. Fisk bear his losses?" and added, "*It is terrible for us.*" He then asked me to bring Mr. Fisk up to his house immediately, as he was indisposed, and did not feel able to go down to his (Fisk's) office. I went after Mr. Fisk, who returned immediately with me to Mr. Corbin's residence, but shortly after came out with Mr. Corbin, who accompanied him to Mr. Fisk's office, where he was closeted with him and Mr. Gould for about two hours. . . . .'"

There are obvious inconsistencies among these different accounts, which it is useless to attempt to explain. The fact of Saturday's interview appears, however, to be beyond dispute.

course from this point must have been almost self-evident to his mind, and there is no reason to suppose that he hesitated.

His own contracts were all fulfilled. Fisk's contracts, all except one, in respect to which the broker was able to compel a settlement, were repudiated. Gould probably suggested to Fisk that it was better to let Belden fail, and to settle a handsome fortune on him, than to sacrifice something more than £1,000,000 in sustaining him. Fisk therefore threw Belden over, and swore that he had acted only under Belden's order; in support of which statement he produced a paper to the following effect: —

"September 24.

"DEAR SIR, — I hereby authorize you to order the purchase and sale of gold on my account during this day to the extent you may deem advisable, and to report the same to me as early as possible. It is to be understood that the profits of such order are to belong entirely to me, and I will, of course, bear any losses resulting.

"Yours,

"WILLIAM BELDEN.

"JAMES FISK, JR."

This document was not produced in the original, and certainly never existed. Belden himself could not be induced to acknowledge the order; and no one would have believed him if he had done so. Meanwhile the matter is before the national courts, and Fisk may probably be held to his contracts: but it will be far more difficult to execute judgment upon him, or to discover his assets.

One of the first acts of the Erie gentlemen after the crisis was to summon their lawyers, and set in action their judicial powers. The object was to prevent the panic-stricken brokers from using legal process to force settlements, and so render the entanglement inextricable. Messrs. Field and Shearman came, and instantly prepared a considerable number of injunctions, which were sent to their judges, signed at once, and immediately served. Gould then was able to dictate the terms of settlement; and after a week of complete paralysis, Broad Street began at last to show signs of returning life. As a legal curiosity, one of these documents, issued three months

after the crisis, may be reproduced, in order to show the powers wielded by the Erie managers: —

"Supreme Court.

H. N. Smith, Jay Gould, H. H. Martin, and J. B. Bach, Plaintiffs,
*against*
John Bonner and Arthur L. Sewell, Defendants,

Injunction by order.

"It appearing satisfactorily to me by the complaint duly verified by the plaintiffs that sufficient grounds for an order of injunction exist, I do hereby order and enjoin . . . . That the defendants, John Bonner and Arthur L. Sewell, their agents, attorneys, and servants, refrain from pressing their pretended claims against the plaintiffs, or either of them, before the Arbitration Committee of the New York Stock Exchange, or from taking any proceedings thereon, or in relation thereto, except in this action.

"George G. Barnard, J. S. C.

"New York, December 29, 1869."

Mr. Bonner had practically been robbed with violence by Mr. Gould, and instead of his being able to bring the robber into court as the criminal, the robber brought him into court as criminal, and the judge forbade him to appear in any other character. Of all Mr. Field's distinguished legal reforms and philanthropic projects, this injunction is beyond a doubt the most brilliant and the most successful.*

* These remarks on Mr. Field's professional conduct as counsel of the Erie Railway have excited a somewhat intemperate controversy, and Mr. Field's partisans in the press have made against the authors of the "Chapters of Erie" a charge which certainly has the merit of even exaggerated modesty on the part of the New York bench and bar, namely, that these writers "have indelicately interfered in a matter alien to them in every way"; the administration of justice in New York being, in this point of view, a matter in which Mr. Field and the Erie Railway are alone concerned. Mr. Field himself has published a letter in the Westminster Review for April, 1871, in which, after the general assertion that the passages in the "New York Gold Conspiracy" which relate to him "cover about as much untruth as could be crowded into so many lines," he proceeds to make the following corrections:

First, he denies, what was never suggested, that he was in any way a party to the origin or progress of the Gold Conspiracy; until (secondly) he was consulted on the 28th of September; when (thirdly) he gave an opinion as to the powers of the members of the Gold and Stock Exchanges. Fourthly, he denies that he has relations of any sort with any judge in New York, or any power over

The fate of the conspirators was not severe. Mr. Corbin went to Washington, where he was snubbed by the President, and at once disappeared from public view, only coming to light again before the Congressional Committee. General Butterfield, whose share in the transaction is least understood, was permitted to resign his office without an investigation. Speculation for the next six months was at an end. Every person involved in the affair seemed to have lost money, and dozens of brokers were swept from the street. But Mr. Jay Gould and Mr. James Fisk, Jr., continued to reign over Erie, and no one can say that their power or their credit was sensibly diminished by a shock which for the time prostrated all the interests of the country.

Nevertheless it is safe to predict that sooner or later the last traces of the disturbing influence of war and paper money will disappear in America, as they have sooner or later disappeared in every other country which has passed through the same evils. The result of this convulsion itself has been in the main good. It indicates the approaching end of a troubled

these judges, other than such as English counsel have in respect to English judges. Fifthly, he asserts that out of twenty-eight injunctions growing out of the gold transactions, his partners obtained only ten, and only one of these ten, the one quoted above, from Justice Barnard. Sixthly, that this injunction was proper to be sought and granted. Seventhly, that Mr. Bonner was not himself the person who had been "robbed with violence," but the assignee of the parties.

On the other hand it does not appear that Mr. Field denies that the injunction as quoted is genuine, or that he is responsible for it, or that it did, as asserted, shut the defendants out of the courts as well as out of the Gold Exchange Arbitration Committee, or that it compelled them to appear only as defendants in a case where they were the injured parties.

In regard to the power which Mr. Field, whether as a private individual or as Erie counsel, has exercised over the New York bench, his modest denial is hardly calculated to serve as a final answer. And in regard to Mr. Bonner, the fact of his being principal or representative scarcely affects the character of Mr Field's injunction. Finally, so far as the text is concerned, after allowing full weight to all Mr. Field's corrections, the public can decide for itself how many untruths it contains. The subject has, however, ceased to be one of consequence even to Mr. Field since the subsequent violent controversy which arose in March, 1871, in regard to other points of Mr. Field's professional conduct, and in another month after his letter was written he would perhaps have thought the comments of the Westminster Review so comparatively trifling in importance as not to deserve his attention.

time. Messrs. Gould and Fisk will at last be obliged to yield to the force of moral and economical laws. The Erie Railway will be rescued, and its history will perhaps rival that of the great speculative manias of the last century. The United States will restore a sound basis to its currency, and will learn to deal with the political reforms it requires. Yet though the regular process of development may be depended upon, in its ordinary and established course, to purge American society of the worst agents of an exceptionally corrupt time, there is in the history of this Erie corporation one matter in regard to which modern society everywhere is directly interested. For the first time since the creation of these enormous corporate bodies, one of them has shown its power for mischief, and has proved itself able to override and trample on law, custom, decency, and every restraint known to society, without scruple, and as yet without check. The belief is common in America that the day is at hand when corporations far greater than the Erie — swaying power such as has never in the world's history been trusted in the hands of mere private citizens, controlled by single men like Vanderbilt, or by combinations of men like Fisk, Gould, and Lane, after having created a system of quiet but irresistible corruption — will ultimately succeed in directing government itself. Under the American form of society, there is now no authority capable of effective resistance. The national government, in order to deal with the corporations, must assume powers refused to it by its fundamental law, and even then is always exposed to the chance of forming an absolute central government which sooner or later is likely to fall into the very hands it is struggling to escape, and thus destroy the limits of its power only in order to make corruption omnipotent. Nor is this danger confined to America alone. The corporation is in its nature a threat against the popular institutions which are spreading so rapidly over the whole world. Wherever there is a popular and limited government this difficulty will be found in its path, and unless some satisfactory solution of the problem can be reached, popular institutions may yet find their very existence endangered.

# AN ERIE RAID.*

HISTORY scarcely affords a parallel to the rapid development of character which took place in America during the five years of the late civil war. At its close the ordinary results of long internal strife were conspicuous only by their absence. No chronic guerilla warfare was sustained in the South, and in the North no unusual license or increase of crime revealed the presence of a million of men unaccustomed to habits of industry and inured to a life of arms. Yet while these superficial indications of change would be sought in vain, other and far more suggestive phases of development cannot but force themselves on the attention of any thoughtful observer. The most noticeable of these is perhaps to be found in a greatly enlarged grasp of enterprise and increased facility of combination. The great operations of war, the handling of large masses of men, the influence of discipline, the lavish expenditure of unprecedented sums of money, the immense financial operations, the possibilities of effective co-operation, were lessons not likely to be lost on men quick to receive and to apply all new ideas. Those keen observers who looked for strange and unexpected phenomena when the struggle in the field was over have indeed witnessed that which must have surpassed all anticipation.

If the five years that succeeded the war have been marked by no exceptional criminal activity, they have witnessed some of the most remarkable examples of organized lawlessness,

* From the North American Review for April, 1871.

under the forms of law, which mankind has yet had an opportunity to study. If individuals have, as a rule, quietly pursued their peaceful vocations, the same cannot be said of certain single men at the head of vast combinations of private wealth. This has been peculiarly the case as regards those controlling the rapidly developed railroad interests. These modern potentates have declared war, negotiated peace, reduced courts, legislatures, and sovereign States to an unqualified obedience to their will, disturbed trade, agitated the currency, imposed taxes, and, boldly setting both law and public opinion at defiance, have freely exercised many other attributes of sovereignty. Neither have the means at disposal proved at all inadequate to the ends in view. Single men have controlled hundreds of miles of railway, thousands of men, tens of millions of revenue, and hundreds of millions of capital. The strength implied in all this they wielded in practical independence of the control both of governments and of individuals; much as petty German despots might have governed their little principalities a century or two ago. Thus by degrees almost the whole of the system of internal communication through the northern half of the United States has practically been partitioned out among a few individuals, and, as proximity, or competition on certain debatable grounds, — the Belgiums of the system, — brought the interests represented by these men into conflict, a series of struggles have ensued replete with dramatic episodes. No history of the present time will be complete in which these do not occupy much space, and any condensed record of them has, therefore, much more than a passing value. Not history in itself, it contains the material of history; yet the thread of these episodes is so difficult to trace, lying concealed in such dull volumes of evidence and records of the law, or preserved only in the knowledge of individuals, that unless it be found at once it is in danger of being lost forever. The speedy oblivion which covers up events that, for a time, fasten public attention and seem big with great results, is indeed one of the noticeable indications of the times. The practical experience

of this fact has tended greatly to encourage all sorts of violations both of law and of morals. There seems no longer to be any Nemesis to dog the evil-doer. Men are to-day in all mouths infamous from active participation in some great scandal or fraud, — some stock operation or gambler's conspiracy, some gold combination or Erie Railway war, some Credit Mobilier's contractor's job or Hartford & Erie scandal, — and to-morrow a new outrage, in another quarter, works a sudden condonation of each offence.

Nothing could more fully illustrate the rapidity with which such episodes as those referred to are forgotten than the complete oblivion into which the struggle in 1869 for the possession of the Albany & Susquehanna Railroad has fallen. This contest, marked by legal scandals almost unparalleled, and actually resulting in an attempt at armed warfare between corporations, though not yet finally passed upon by the courts, is fairly forgotten by the world. It was, however, not without elements of a permanent interest, though no consecutive account of it has yet been attempted. The following narrative, drawn almost exclusively from the sworn evidence and official records in the case, probably presents the story with as near an approach to accuracy as is now likely ever to be arrived at.

The business of transportation by rail naturally divides itself into the two great elements of through and local traffic. The Erie Railway was especially constructed with a view to through traffic, and the New York Central, though originally consisting in a chain of disconnected local roads, through the force of circumstances and by a natural process of development, early became one of the great trunk lines of the continent. The Albany & Susquehanna, on the contrary, was designed by its projectors as a purely local road. As such its history could never have been a very interesting one, except to its projectors and owners. It happened, however, to occupy a bit of debatable territory between the two great trunk lines just mentioned, and hence derived its importance. New

England has always been in railroad history a sort of an appanage of the Central Railroad of New York. Both freight and passengers passing to and fro between Boston and the West naturally took Albany on their way, and the Central Road, monopolizing as it did the one natural gap in the mountain ranges which divided the interior basin from the sea, looked upon this traffic as its inalienable property. The Albany & Susquehanna Railroad started from this eastern terminus of the Central, and was intended to open it to the Erie at the city of Binghamton, some one hundred and forty miles from the point of departure. In the early days of the enterprise through traffic was less regarded by railroad managers than it now is, and the future significance of this link in their system was hardly realized by either of the great trunk lines. The carriage of freight was then but little understood, and grades were of far greater importance than they now are. Valley roads, it was supposed, might safely ignore the mountain track. This the Albany & Susquehanna certainly was. The region through which it passes is very broken, though it ranks among the finest of the agricultural districts of New York. Starting from that point where the great Alleghany range gradually sinks away into the valley of the Mohawk, the road skirts the base of the heights of Helderberg, an outlying spur of the Catskills, famous once as the seat of the anti-rent troubles, and then, passing among the large rolling hills of Southeastern New York, it gradually climbs the watershed. The route was a difficult one, and the road was costly of construction; laid out on the broad-gauge principle, as a contemplated feeder of the Erie, it was forced to scale ridge after ridge in working its way from one picturesque valley to another, through which to find a natural roadway to its destination. The country along the line is of a hilly rather than a mountainous character, partaking more of the appearance of Vermont than of New Hampshire; timbered lands and cultivated fields alternate over the loftiest summits, and there is something peculiarly attractive in the primitive nestling appearance of the towns and villages. The road thus was

projected through a difficult and sequestered region, neither wealthy nor of varied industries, opening to a new trade neither great markets nor a peculiarly active people. It encountered, therefore, even more than the average amount of those financial tribulations which mark the early history of all railroads.

The company was organized in 1852, and the work of construction was begun in 1853, with one million dollars raised by individual subscription along the line of the road; further sums in aid of construction were subsequently received from the towns likely to be benefited by the line, which, by an act of special legislation, were authorized to subscribe to its stock; a loan of one million dollars was likewise obtained from the city of Albany, upon a pledge of the first-mortgage bonds of the company. The process of construction was, however, very slow. The work begun in 1853 was suspended in 1854 on account of the failure of the contractors; it was recommenced in 1857, and then slowly dragged along to completion, a very contractors' Golgotha. Eight times did acts extending to it the financial aid of the State pass the legislature; but they were encountered by six Executive vetoes, and from this source the company realized but seven hundred and fifty thousand dollars. That the scheme was successfully carried out at all was mainly due to the good pluck and untiring industry of one man, Joseph H. Ramsey, — at once the originator, president, financial agent, legal adviser, and guiding spirit of the enterprise.

The close of the seventeenth year of corporate life found all the available means of the company exhausted, and every one connected with it, except Mr. Ramsey, thoroughly discouraged and despondent, with the twenty-two last and most difficult miles of the work yet unfinished. In this emergency the company once more looked to the State for assistance. Through the management of Mr. Ramsey, who had himself in former times more than once assumed the duties of a State legislator in behalf of the enterprise, the necessary act was passed. Most unexpectedly it encountered a veto, the sixth

of the series. With an empty treasury, with heavy payments to contractors and on account of interest already due, and with other similar payments rapidly maturing, — with bankruptcy staring him in the face, and with all sources of supply apparently exhausted, — under all these disheartening aspects of the case Mr. Ramsey did not despair. The company had in its safe two classes of securities and two only on which the further necessary loans could possibly be effected. It had a portion of its own second-mortgage bonds and some nine thousand shares of its capital stock, on which various instalments ranging from ten to forty per cent had been paid by the original subscribers. This stock and the subscriptions upon it had subsequently been declared forfeited by a vote of the Board of Directors, with the consent of the holders, for the non-payment of the balance of subscriptions. A law of New York prescribed that no railroad should issue its stock for less than its par value. This law, however, the courts had held did not apply to forfeited stock in the treasury of the company. The difficulty in the case was not in putting the stock on the market, but in finding a purchaser for it when it got there; it had no market price; as an investment it ranked far from high, and, unlike the Erie, it had at this time no value for "speculative purposes." Under these circumstances it seemed possible to the directors to make this one of their two securities available only as a make-weight, — a *douceur*, it might be said, to the other. Two loans were effected accordingly, under a resolution which received the unanimous approval of the Board of Directors on the 3d of June, 1868. The first was with Azro Chase, who became the purchaser of fifty thousand dollars of the second-mortgage bonds at seventy per cent of their par value, with the additional right or option of taking at any time three hundred shares of the forfeited stock at twenty dollars per share. This loan was negotiated through one of the directors of the company named Leonard, acting as its financial agent, and amounted to the sale of eighty thousand dollars, in the nominal securities of the company, for the sum of forty-one thousand dollars in cash. Two

hundred shares of the stock, as it afterwards appeared, passed into the pockets of the director and financial agent as a species of brokerage commission. The second loan was negotiated by Mr. Ramsey himself with Mr. David Groesbeck, the head of a well-known brokers' firm in the city of New York, and formerly the business associate of Mr. Daniel Drew. This loan was upon terms somewhat more favorable to the company than the other, and there were no indications of brokerage in the case. The company received five hundred and sixty thousand dollars, and pledged as collateral its second-mortgage bonds at seventy per cent, with the privilege of purchasing them at any time within eighteen months at eighty, and a similar privilege as regarded twenty-four hundred shares of the forfeited stock at twenty-five dollars per share. In other words, if the lenders availed themselves of the option, as they subsequently did, securities to the nominal value of one million and forty thousand dollars were sold to them for seven hundred thousand dollars in cash. This must certainly be considered as a very advantageous bargain for the company; thirty per cent is a large profit, but it here represented a very unusual risk. Both of these loans received the unanimous sanction of the Board of Directors, and that to Groesbeck played a most important part in the subsequent struggle for the possession of the road.

With the money thus raised the enterprise was at last carried through, and, on the 15th of January, 1869, seventeen years after the organization of the company, the cities of Binghamton and Albany were brought into direct communication. Meanwhile those seventeen years of construction had greatly altered all the conditions of that railroad system of which the Albany & Susquehanna Railroad was now for the first time to become an integral part. In 1853 both the Erie and the Central were but feebly entering on their great careers. The Erie was just completed to Dunkirk: the Central was not yet consolidated; the whole receipts of the first were but one third part of what the completion of Mr. Ramsey's road found them, while, during the same interval, the receipts of the last

had swollen from less than six millions per annum to considerably over fifteen. As for the men who managed the great trunk lines when Mr. Ramsey had completed his work, their names had never been mentioned in connection with railroads when he began it. In fact, the whole aspect of the problem had changed. In 1853 all the roads in the country were local roads; in 1869 no local road was suffered to exist, unless the great through roads were satisfied that it could serve no purpose in their hands; nay, more, unless they were also satisfied that it could serve no purpose in the hands of their competitors. When, therefore, the projectors of the Albany & Susquehanna line had completed it to Binghamton, they suddenly found themselves involved in all the complications and controversies of an intricate system. The intended local road was an element of strength or a source of danger not to be ignored by the managers of the great trunk lines.

Messrs. Jay Gould and James Fisk, Jr., had at this time already succeeded in firmly establishing themselves in the practical ownership of the Erie Railway. Mr. Daniel Drew, some six months before, had been driven out of its treasurership, and even Commodore Vanderbilt had been compelled by fair means and by foul to abandon all idea of controlling its management. When the Susquehanna Road was completed it became at once a most important element in the successful prosecution of the plans of Messrs. Gould and Fisk. It was so from two points of view, — either as regarded their competition with the Central Road for the carriage of the produce of the West to New England; or, still more important, as regarded their competition with other agencies for the carriage of coal to the same region. The anthracite coal deposits of America lie but a short distance to the south of the Erie Railway. Disappointed in the hope of successfully competing with the Central Road for the carriage of the produce of the West, convinced at last by hard experience that the more of this business the road undertook to do the more hopelessly bankrupt it became, the Erie managers had more and more turned their attention to the business of transporting coal.

In this also they were subject to a very sharp competition, particularly from the wealthy companies which themselves owned the coal-beds, and which now proposed to supplement their business as colliers with that of carriers also. This by no means met the views of the Erie people. They were now entering into vast contracts with various coal companies to haul many hundreds of thousands of tons per annum; they naturally wished to extend their connection, as by doing so they accomplished two ends, — they shut the coal companies up in their mines, making them dependent on the Erie Railway for access to their markets, and at the same time they secured to themselves a monopoly in so far as the consumers were concerned; they, in fact, placed themselves as an indispensable medium between producer and consumer. The Albany & Susquehanna Road might well develop into an independent and competing line; hence they greatly coveted the possession of it. By it they would not only secure an access to Albany, but would forge the link which was to unite the Erie with a whole network of roads running north and east from Albany throughout coal-consuming New England.

It is wholly unnecessary to dwell upon the public considerations which rendered it unadvisable that the adventurers then representing the Erie Railway should be intrusted with a practical control over the winter supply of such an article as anthracite coal. However amiable or otherwise they might be in their domestic characters, their course had not been such as to make unprejudiced observers anxious to repose in them so delicate a duty as that of sole purveyors at any season of an article of prime necessity. The coal companies naturally did not look with any favor at a policy which threatened their lines of communication. Finally Mr. Ramsey, as the controlling influence in the Albany & Susquehanna management, neither desired to surrender the independence of his road, nor, in view of the recent experience of others, did he impose implicit faith in either the verbal or written assurances or obligations of the Erie representatives. Possession was with them considerably more than nine points of the law,

and Mr. Ramsey evinced a marked repugnance to surrender the property intrusted to his charge into their possession, regardless of any liberal promises held out as to subsequent beneficial results, public and private, likely to ensue from his doing so.

The position of Mr. Ramsey in his own board of direction was not, however, perfectly secure. Certain enmities and jealousies had, little by little, not unnaturally grown up along the line of the road, and, at the election of directors in 1868, a ticket had been chosen partly in the opposition interest. What these parties represented when they came into the board it is difficult to say; it may have been a restless feeling of discontent at the slow progress of the enterprise, or a vague desire for change; or, perhaps, a personal dislike and mistrust of Mr. Ramsey. Whatever the cause, the direction at the time of the completion of the road was divided not unevenly. This condition of affairs was very unsatisfactory to Mr. Ramsey. He maintained that at the previous election he and his friends had been taken by surprise; that no wish for a change in management really existed in the minds of the bulk of the stockholders; but, finally, whether it existed or not, he let it be distinctly understood that he did not intend to belong to a divided direction, and that at the coming election either he or his opponents were to go out. The materials for a lively contest for the control of the company in September, 1869, thus existed in great abundance and on all sides.

The road was completed in January, and early in June the Erie manipulators began their preparations to obtain possession of it, or, as they more graphically would have said, to "gobble" it. The stock of the road was nominally quoted at about twenty-five per cent of its par value; it was rarely bought or sold, and was supposed to possess little real value, except as representing the control of the enterprise. It was almost exclusively in the hands of three classes of owners, — the directors and those dwelling along the line of the road, subscribing municipalities, and certain capitalists who held it as security for money advanced and expended in construction. The subscription books of the company had never been closed,

as but two million eight hundred thousand dollars of the four million dollars of authorized capital had ever been subscribed, and of the amount of stock which had been subscribed for, eight hundred thousand dollars had been forfeited in the manner already mentioned. Whoever desired to get possession of the property had, therefore, to obtain the control for a longer or shorter period, to include the election day, of a majority of this stock. The Erie party wishing to come in, and the opposition minority determined not to go out, thus had natural affinities to each other. But though when united they controlled a formidable minority of the whole stock, yet it was by no means the majority, and the Ramsey party was now thoroughly alive to the danger of the situation. The plan for the approaching campaign was soon matured. Under a sudden demand for election purposes the stock, which for years had been nominally quoted at twenty, rose rapidly in July to forty and fifty, and even to sixty and sixty-five per cent. All parties were buying. The issue was, however, to be decided by stock held by municipalities, and it was to the control of this that the greatest efforts were devoted. Here lay the stronghold of the Ramsey party; and here they felt secure, for the law authorized the town commissioners, who held this stock as trustees, to sell it only for cash and at its par value, and forbade them to sell it for less unless specially authorized to do so by a town vote. This was a point which it seemed hardly likely to touch. Suddenly, and to their great dismay, Mr. Ramsey and his friends heard of agents out among the towns offering the commissioners par for the stock, provided the offer was accepted at once. Naturally this was a great temptation to commissioners who represented towns which grievously felt the weight of railroad loans. These men were suddenly called upon to accept or reject, on their own responsibility, an offer which, a few days before, would have seemed incredible, but the acceptance of which, while it would relieve the town of debt, would also deprive it of all voice in the management of the road waited for so long. In a number of cases the commissioners considered it their duty

to accept the offer, and the control of several hundred shares was in this way secured. The Ramsey party was thus forced into the field, and the stock of towns rose to a premium. This process, however, involved a very considerable outlay of money and no inconsiderable risk of loss. Buying up a majority of the stock was altogether too much like paying for a road. Why should that be obtained at great cost which could equally well be got for nothing? Stimulated by the passion which Mr. Fisk has happily described as an inherited disposition "to rescue things out of somebody else," one Sunday afternoon, early in August, a party of gentlemen met at the Fifth Avenue Hotel in New York and arranged a new plan, involving the certain transfer of the road into their hands, but avoiding the necessity of further pecuniary outlay. A negotiation was successfully concluded for the purchase of four hundred and fifty thousand dollars of the stock of various towns on the following terms: no money was to pass, but the bonds of Messrs. Gould and Fisk were given, binding them to purchase and pay for the stock after the election, provided the commissioners should at the election vote as the givers of the bond should direct. The legal effect of such an arrangement may well have escaped the town commissioners, but Messrs. Fisk and Gould had not as a rule up to this time been found deficient in matters of technical nicety. These bonds had no binding force whatever. It was not a sale for cash, it was contrary to law and to public policy; it was an arrangement wholly beyond the powers of the commissioners to make, and one which the courts would not sustain. The commissioners who accepted these bonds and who subsequently did vote as those who gave them dictated, were public officials, as such their duties were prescribed and were sufficiently simple; they could sell, and they could vote, but if they sold it was to be for cash down, and if they voted it was to be on their own judgments, and not on those of other people. In this case, indeed, what security had they that, after they had voted the road into the hands of the Erie managers, the conditions of the bond in regard to the purchase of the stock would be ful-

filled? As a matter of fact they did vote as they agreed, but nothing further was ever done to complete the transfer of the stock.

Events now moved rapidly on both sides. On the 3d of August the certificates of town stock were presented for transfer. It was a new question; Mr. Ramsey was away, and the treasurer hesitated. Finally, all stock sold for cash and paid for by either side was transferred; but the transfer was denied where, in the opinion of the treasurer, the transaction was not completed. It was evident they were pressing the Ramsey party heavily. It now occurred to Ramsey that the subscription-books had never been closed, and that twelve thousand shares of the capital stock of the company were as yet unissued. On the 5th he took the subscription-book home with him, held a meeting of a few of his friends, and, among them, they wrote down their names for nine thousand five hundred shares of stock. It was fully understood that this subscription bound those who made it to no immediate payments; ten per cent was to be paid in at once, and for this Ramsey was to provide; the remainder would only be called in as should be ordered by the board of directors whom this very stock would elect. Meanwhile, if any of the subscribers desired to get rid of their stock, Ramsey undertook to relieve them of it. That this subscription, made by directors in secret on the eve of an election, and with a view of affecting that election, should have subsequently been held legal is open to criticism; its good faith even might well have been suspected; but that, on grave consideration, it should be justifiable is perhaps as severe a censure as could be passed on the condition of affairs existing in the community in which it was made. Yet, under the circumstances, unnecessary and unfortunate as the step afterwards proved to have been, Mr. Ramsey and his friends were justified in taking it. It is simply necessary to refer to those who now sought to obtain control of the Albany & Susquehanna Railroad. Their position in the community, their standing in the courts, their financial and fiduciary relations, were notorious. They had reduced society to a condition in which

any man brought into conflict with them could not but realize that he had only himself to rely on, that a species of Lynch law prevailed, and that might and possession alone counted for anything. The first duty of Mr. Ramsey then, unquestionably, was to keep the property intrusted to his charge out of the hands of those men; this every consideration of honor and of responsibility bound him to do at any cost and by all legal means, certain that, whatever he might scruple at, his opponents, once in control, would scruple at nothing. This step was legal, and, however questionable in many aspects, Mr. Ramsey and his friends were justified in taking it, provided they made their subscriptions in good faith to their company, and held themselves responsible for them. At best, however, it was an error in judgment. By it Mr. Ramsey sacrificed much of the strength of his position, which lay in the fact that he was fighting men who had set the most infamous precedents ever known for transactions of a not dissimilar character. As usual in dealing in measures of questionable right and expediency, one doubtful step soon led to another which admitted of no doubt.

Ten per cent on the amount of the subscriptions had at once to be provided, and that, too, by Ramsey, whose resources were already strained to the utmost. Again he had recourse to Groesbeck, and drew on him for $100,000; he had also subscribed for more stock in Groesbeck's name. The subscription, involving as it did further possible calls to the full value of the stock, Groesbeck politely declined; the draft he honored, receiving as collateral for it a deposit of $150,000 of the equipment bonds of the Albany & Susquehanna Railroad Co., which belonged to the road, and which Mr. Ramsey procured from the treasurer for the purpose of so pledging them. The ten per cent of the subscription was thus paid in, and the nine thousand five hundred shares were placed on the books of the company to the credit of the nominal subscribers, each of whom gave Ramsey a voting proxy for the coming election. Months afterwards Mr. Groesbeck defended this transaction, and declared that, under the same circumstances and fighting

the same men, he himself would have gone as far, and further too, if necessary. The proceeding was, however, none the less indefensible. The securities which had thus been misapplied were shortly after, at Groesbeck's own suggestion, returned to the officials of the company, and their place supplied by collateral of inferior value; and as for the stock, it was never voted on, and the issue of it only served to endanger the case of the Ramsey party.*

This took place on the 5th of August, but already the usual storm of judicial orders and injunctions had begun. The stock of the towns being, so far as possible, secured, the next blow was directed at the stock reissued and held as collateral. Two blocks of this were outstanding, — one in the hands of Chase, the other in those of Groesbeck. On the application of Messrs. Gould and Fisk's counsel, an injunction was issued by Mr. Justice Barnard, of the Supreme Court, forbidding any votes being cast upon this stock, and ordering its transfer to a receiver pending judicial investigation; all this upon the ground that the stock was unlawfully issued. The books were to close upon the 7th, the order was procured on the 4th. While this was going on in the city, the Ramsey party was not idle in the

* This and the previous paragraph are republished in the form in which they originally appeared. Yet it may well be questioned whether even the modified censure implied upon Mr. Ramsey's proceedings would bear examination. Ordinary rules cannot always govern exceptional cases. If a man finds himself involved in an every-day controversy, however angry, he is very properly expected to confine himself to recognized remedies; if, however, he is suddenly roused from his sleep by the assault of midnight robbers, he cannot, if he is a man of courage, be called upon to exercise any nice judgment as to the use he may make of the weapons nearest at hand; — it is a case of self-preservation. Especially would this be true if his assailants were notoriously in collusion with the watch. If Ramsey had hesitated, even for an instant, his friends would have lost courage, and he could never have recovered himself; under the circumstances it is very difficult to see why he was not as fully justified in the use of any and every weapon as a man would be in a struggle for his life. Of course in the one case or the other he would be amenable to the law for any illegal act. The question is one purely of moral accountability; legally, a man so circumstanced must act at his own peril. He may infringe laws, and, if he does, he must be prepared to undergo the penalty of so doing, but it may yet be his duty to incur that penalty in defence of his trust.

country. On the same day they appeared before Judge Parker of Owego and commenced a suit, resulting, of course, in the inevitable injunction, by which all parties were restrained and enjoined from transferring on the books of the company seven hundred shares of stock belonging to the town of Oneonta, and which the Erie party claimed to have purchased. No sooner did the news of this move arrive in New York, than Mr. Thomas G. Shearman, a member of the firm of Field, Shearman, & Co., and one of the most trusted legal advisers of those now controlling the Erie Railway, was despatched to Owego, where he succeeded in getting the injunction dissolved. Hitherto the engagement had been at long range, as it were, but it now lacked a few days only of the date when transfers previous to the election were to cease; it was time for close quarters. Not content with the success of his defensive operations, the Erie counsellor at once assumed a vigorous offensive. Two new suits were initiated, — one to compel the immediate transfer of that very Oneonta stock which the company had just previously sought to prevent; and the other, a more vital thrust still, sought to restrain Ramsey himself from the further performance of his duties as president of the company. It is almost unnecessary to say that both the desired orders were almost immediately obtained. The board of direction was divided into two hostile camps exactly equal in strength, — they stood seven to seven. The suspension of Mr. Ramsey thus turned the scale and placed the Erie opposition in the majority. It remained only to call a meeting of the directors, over which the vice-president, whose sympathy with the Erie movement was pronounced, would preside, and this meeting would vote out of office the present treasurer, who hesitated about the desired transfers, and would replace him by a suitable successor. Absolute control of the books thus secured, the election might be regarded as a mere matter of detail. All the day of that meeting the offices of the company swarmed with indignant directors and opposing counsel; angry words passed, loud threats were uttered; the suspended president was informed that his presence was undesired, and the

unsuspended vice-president showed a strong disposition to assume also the duties of treasurer in so far as these involved the entering of transfers and the issuing of certificates of stock. At last a sort of tussle took place over the books, and then the police were called in, who established an angry truce. All this took place on the 5th; on the 7th the books were to be closed.

The control of those books, it was well understood, implied the control of the road. The presence of James Fisk, Jr., and of Jay Gould in the struggle was no mystery, and the officers of the road could not fail to recall how, only a few months before, the vault of the Union Pacific Railroad had been forced, in a vain search for the books of the company, under cover of a judicial process and at the dictation of these very men. That the records were not in safety while in the offices of the corporation was notorious. That night, in the presence of counsel, and with the knowledge of the treasurer, they were removed from the building. The law guaranteed to stockholders access to the books of the corporation; the judicial abuse of the processes of law had converted this right into a facility for fraud. Whether those who would now insist upon the right were likely to avail themselves of that opportunity was a question in regard to which recent experience in other quarters might warrant the formation of an opinion. In any case the books were now surreptitiously removed under the advice of counsel, and the action of the officials who assented to this removal was indorsed by public opinion, and, throughout the subsequent proceedings, was not censured by the courts.

The next day the opposition wing of the direction met and organized with the vice-president in the chair. Just as they were proceeding to business, however, an attorney of the other wing quietly entered the room and served upon four of those present a new judicial order, restraining them from acting as directors of the company, or from interfering with its affairs. This unexpected move, leaving them without a quorum, fell like a thunderbolt on the Albany members of the

Erie party, and they precipitately retired from the field and took the first train to New York in search of counsel and assistance.

Reaching the Grand Opera House and the offices of the Erie counsel, the fugitives laid their case before Mr. Shearman. The quick eye of that gentleman at once took in the whole situation, and he was not unequal to the emergency. The president, vice-president, and a majority of the board of direction were now suspended, and the Albany & Susquehanna Railroad was suspended with them; every one was enjoined; there was no one authorized to give an order or to pay out a dollar; chaos was come again. Recognizing the fact that a court of equity had done this mischief through the exercise of one of its powers, Mr. Shearman was inspired with a conviction that the same court must repair it by the exercise of another power, — injunctions had occasioned the dead-lock, a receivership must dissolve it. A new suit was at once commenced, the complaint in which set forth the existing condition of affairs, and prayed for the appointment of receivers who should operate the road, and so avert the disastrous consequences otherwise sure to ensue. This paper was drawn up by Mr. Shearman at his office in the Twenty-third Street Opera House, on the afternoon of Friday the 6th of August. It was not ready for signature until the hour of ten o'clock, P. M. The Grand Opera House is not in the immediate vicinity of any court of law, nor do judges generally frequent their court-rooms at late hours on August evenings. The private residence of Mr. Justice Barnard was on Twenty-first Street, at least half a mile away, and on the morning of this day the Justice himself was at the bedside of his dying mother at Poughkeepsie, seventy-five miles from New York. Telegraphs from Mr. Fisk had, however, found him there and summoned him to the city. The order was ready for signature at 10.20 P. M., when it was delivered to a junior partner of the firm of Field, Shearman, & Co., who thereupon left the Grand Opera House and, in fifteen minutes, returned with what purported to be Judge Barnard's signature appended to it. A strange

obscurity hangs over this part of the transaction. It was never stated throughout the subsequent proceedings where this order was signed; it was never proved that it had then been signed by Judge Barnard at all. Diligent inquiry at a date long subsequent failed to discover any trace of it in the records of the court; no evidence was ever elicited that Judge Barnard was in New York at any time during that day. It was subsequently said to have been signed at the house of Fisk's mistress; but this strange statement only called forth a bare denial unaccompanied by any explanation.* That this order, whether there signed by him or not, was subsequently adopted as his own by Judge Barnard admits of no doubt. Under the most favorable supposition it would appear that the surprisingly brief period of fifteen minutes had sufficed to go through all the forms and make all the inquiries necessary to satisfy the judicial mind in regard to so trifling a matter as the receivership of some one hundred and fifty miles of railroad, involving millions of capital. This order appointed Charles Courter, of whom the judge probably knew absolutely nothing, and James Fisk, Jr., of whom he undoubtedly knew a great deal, receivers of the Albany & Susquehanna Railroad Co. Criticism is wholly unnecessary. The whole proceeding reflects the highest credit on the energy of all concerned: it speaks volumes. The law's delay is an ill of which the citizens of New York, certainly, have no cause to complain, at all times and under all circumstances.

By half after ten o'clock all was settled, and at eleven the two receivers, accompanied by a select body-guard of directors, friends, and lawyers, were on their way by the night train to take possession of their charge. Their opponents had, how-

* It has since been stated, on the authority of Judge Barnard, that he accidentally met the counsel on his way from the cars to his house, and was asked by him to sign the order; that he did so, stepping into a neighboring real-estate office for the purpose. The meeting was certainly a singular coincidence, and the method indicated of transacting judicial business of the first importance is calculated to excite surprise, if not consternation. The "explanation" seems, however, to have been considered perfectly satisfactory by those to whom it was made.

ever, already got an inkling of the summary process impending over them from New York, and, while Mr. Shearman was busy with the preparation of his order in the Grand Opera House, other counsel were no less busy in the opposing camp at Albany preparing a counter-order, appointing another receiver in their own interest. This, when completed, was duly submitted to Mr. Justice Peckham, of the Supreme Court of the Albany district, between nine and ten o'clock of the same (Friday) evening. The signature of this magistrate was affixed to it, and a Mr. Pruyn, of Albany, was by him appointed receiver of the Albany & Susquehanna Railroad Co. It was close work. Each order took effect when signed, and there certainly was no delay in their preparation, and even less in procuring signatures to them. The evidence seemed subsequently to indicate that the Albany receivership had about one hour's priority in time; it had, however, one hundred and fifty miles of distance in its favor, and the great weight which attaches to possession as an element of success in litigation has long since passed into a proverb.

Thus, on Saturday, the 7th of August, everything indicated a collision of forces. No sooner had Receiver Fisk reached Albany, and received the reports of his scouts, than he hastened with his friends to the offices of the company. He arrived there towards eight o'clock. In spite of this praiseworthy activity on their part, Messrs. Fisk and Courter, on proceeding to take possession of the premises, encountered a somewhat unexpected obstacle in the person of a Mr. Van Valkenburg, the superintendent of the road, who, upon being informed of their errand, announced that he was already in possession under the orders of Receiver Pruyn, and further intimated that he did not propose to abandon it. A very amusing and somewhat exciting scene then ensued. The junior appointee of Mr. Justice Barnard presented his papers to the superintendent, seated himself on the table, announced himself as Mr. James Fisk, Jr., of New York, come to take possession and prepared to do so if it required "millions of money and an unlimited number of men." He further added

that this was his twenty-sixth raid of the same character, and that he proposed "to take you fellows"; to all of which Mr. Van Valkenburg pleasantly replied that he "hoped he would have a good time doing it." His companions Mr. Fisk introduced as his "boys," and invited them in to possess themselves. Quite a lively colloquy ensued, which was not satisfactory to Mr. Fisk, who from words gradually proceeded to overt acts, and finally ordered his "boys" to put the other "boys" out. Unfortunately the preponderance of force was not on his side. Instead of ejecting his opponents, he was summarily ejected himself, and, after being ignominiously and very roughly hustled down stairs, he found himself in the street in a very dishevelled condition. Nor did his discomfiture stop here; no sooner did he reach the pavement than he was arrested by a fiery little individual, claiming to be a policeman, and ignominiously marched off to the station-house. As no complaint was preferred he was speedily released, but probably not until he had discovered that his arrest, like his ejectment, was the work, not of a policeman, but of an employee of the company. No sooner was he again a free man than he returned to the charge. Mr. Pruyn was now at the offices in person, claiming to be in possession as receiver, and a crowd of lawyers, officers, and parties in interest had also assembled there. The heads of the opposing factions met face to face. No further riotous demonstrations were attempted, but, pending advices from New York, Mr. Fisk kept up the semblance of a possession. He evidently bore no ill-will to Mr. Van Valkenburg, on account of the rough treatment of the morning, as he even went so far as to compliment that gentleman on his display of energy, and to signify a desire to extend to him his personal favor. As to Mr. Ramsey, Mr. Fisk, as a happy solution of existing complications, suggested that the possession of the road should be decided, not as of old by a personal contest between the two heads of the opposing factions, but by the goddess of chance, or whatever other divinity may preside over the issue of a game of "seven up"; and, with such interchange of amenities and pleasant

sallies of wit, with now and again the service of some notice or order of court, and perhaps an injunction or two, the *protégé* of Barnard beguiled the weary monotony of the day.

The cessation of active hostilities did not last long. The discomfiture of the morning had been at once telegraphed to Mr. Shearman, in the recesses of the Grand Opera House, and that gentleman had forthwith proceeded to discover and apply the suitable remedies of the law. Recourse was at once had, or is alleged to have been had, to Judge Barnard, sitting at special term in the court-house. Again, however, a curious obscurity hangs over the actual whereabouts of that magistrate. On this day his mother was still lingering at Poughkeepsie, and another judge was sitting at special term in the court-house. In any case a most unusual and indeed wellnigh antiquated writ, never before granted to meet such an exigency as that which had now arisen, was at once exhumed and prepared. In the first place a new and sweeping injunction, purporting to have been granted by Judge Barnard, was obtained, by virtue of which Mr. Receiver Pruyn, the sheriff of the county, the Albany police, and all the railroad employees, were restrained from any interference with receivers Courter and Fisk. Not satisfied with this, a writ of assistance * was likewise ordered to issue, by which the sheriff, and, if need be, the *posse comitatus*, were placed at the disposal of Messrs. Fisk and Courter. This was a sufficiently unusual proceeding, but the service of the process was so extraordinary that the ordering it was at once reduced to the commonplace. Now, probably for the first time on record, both injunction and writ were forwarded to their destination for service by electric telegraph. That afternoon officers in Albany actually undertook to serve upon parties to a suit processes which had been issued in New York

* "Writs to the sheriff, to assist a receiver, sequestrator, or other party to a suit in chancery, to get possession, under a decree of the court, of lands withheld from him by another party to the suit. These writs, which issue from the equity side of the Court of Exchequer, or from any other court of chancery, are at least as old as the reign of James I., and are still in common use in England, Ireland, and some of the United States." — *Quincy's* (*Mass.*) *Reports*, p. 396.

not an hour before, on the strength of affidavits as to facts which had that day occurred in Albany. In place of making service with the original, bearing the seal of the court and the signature of the judge, the very ink of the copies which the officers had in their hands was not yet dry. Of course such a service was contemptuously disregarded, nor did the sheriff presume to insist upon it.

It was now afternoon, and it was very evident that nothing further could be effected this day; both parties, however, claimed to be in possession, and neither would yield the ground. Finally a species of truce was arranged to hold good over the coming Sunday. A representative of each party was to be left in the offices, and, before nine o'clock of the coming Monday, no act of hostility, open or covert, in so far as possession was concerned, was to be attempted by either side.

The interval of Sunday was passed in active preparation. While the representatives of the receivers tarried in the deserted offices, the principals themselves were busy with their plans of campaign. Mr. Fisk and his friends among the directors retired to New York to get advice and the originals of the telegraphed writs; Mr. Pruyn and the Ramsey party stoutly prepared themselves in Albany for such trials as the morrow might bring forth. The issue now presented was, in plain language, one simply of judicial nerve. It was a conflict between the judiciary of New York City and that of the country. The system of electing judges by the popular vote had at last brought forth bitter fruit, and men had been elevated to the bench who should have ornamented the dock. These selections did not perhaps extend beyond one or two districts out of the eight into which the State was divided, but each of the thirty-three judges who composed those eight courts exercised throughout the State the extensive and delicate powers of a chancellor. All were magistrates of co-ordinate powers, and technically of one court; an order made by one could be dissolved by another, an officer appointed by this magistrate could be suspended in the exercise of his duties by that, what

one justice could do the next could undo. Everything under such a system depended on judicial respect for judicial action; courtesy and confidence were the essence of it. All these had, in certain quarters, now long passed away. The judges of the country had felt bitterly the discredit brought upon the common bench by the action of more than one judge in the city; there were among them those who had been deeply mortified by a contemptuous disregard of their process. Hence a conflict had become inevitable, and nowhere was it so likely to arise as out of the litigations originating with the managers of the Erie Railway. A peculiar discredit had now long attached to these, and certain names, both on the bench and at the bar, were always associated with them. There are facts which are of public notoriety; the community recognizes them and no justice can ignore them. When, therefore, James Fisk, Jr., was appointed, as a matter of course, by Judge Barnard, receiver of a railway, no part of which lay within a hundred miles of that magistrate's judicial district, and when this appointment was made on the eve of a contested election for directors of that railway, and must have been decisive of the contest, then, at last, a case was presented which could not be ignored. The conflict was not likely to be a pleasant one. Recent proceedings in other causes had indicated with sufficient clearness the lengths to which certain justices of the first district were not indisposed to go. Neither the scandal certainly involved, nor the defeat not unlikely to ensue, were pleasant to contemplate; but the stand must be made. Circumstances had already designated Judge Peckham, of Albany, as the magistrate to whom the Ramsey people must almost necessarily have recourse. The public estimation in which this gentleman is held was shown by his election, shortly after the events here narrated took place, as one of the new Court of Appeals organized under the judiciary clause of the rejected Constitution of 1869. The scandal which arose out of the Albany & Susquehanna case most materially contributed to the adoption of this single clause. It is probable, therefore, that the action of Judge Peckham on this occasion had a

direct influence on his own future elevation; it certainly received the public indorsement.

Receiver Fisk might confidently be expected back, well armed with injunctions and with the original of his writ of assistance on Monday morning. It was necessary that Receiver Pruyn should be prepared to meet him. The last New York suit had enjoined the Albany receiver from any interference with the New York receivers, and had been accompanied by a writ of assistance. This was now met in the usual way. A new Albany suit enjoined the New York receiver from any interference with Mr. Pruyn, and at the same time an order was issued by Judge Peckham restraining the sheriffs from taking any action under the writs of assistance. It was further sought to punish Mr. Fisk for a contempt of court in interfering with its receiver on the previous Saturday, but this the judge held it necessary to send to a referee to take evidence and report. A temporary injunction was granted, and Mr. Fisk was ordered to appear and show cause on the 13th why this should not be made permanent. Such were the legal complications encountered by Mr. Fisk on his return to the scene of his labors early on Monday morning. He had left New York on the boat the evening before, in company with fifteen friends and advisers, and was fully prepared for vigorous operations. The condition of affairs did not look propitious. He was distinctly checkmated at Albany, and the order checkmating him, and forbidding the sheriffs to interfere to put him in possession, was already on the express-train which had left Albany at 8 A. M., and would be due in Binghamton, at the other end of the coveted road, at three o'clock that afternoon. A party to a conflict, however, who operates by steam, is at a manifest disadvantage when acting against one who despatches writs by telegraph. In the present case Mr. Fisk, baffled at one end of the line, went vigorously to work a hundred and forty miles away at the other end of it. While the express-train was toiling along to Binghamton, enjoining as it went all sheriffs and others from paying any attention to his writs of assistance, the telegraph was flashing those writs

direct to Binghamton, and commanding that immediate possession should be given to his representatives. Accordingly just before two o'clock, and as the afternoon train for Albany was on the point of leaving Binghamton, the sheriff of Broome County made his appearance, and, by virtue of a writ of Judge Barnard's, fresh from the telegraph wires, proceeded to take possession of all the property of the Albany & Susquehanna Railroad Co., including the train then standing at the station. Three locomotives belonging to the same company were also at Binghamton. These he undertook to seize next; of two of them he obtained possession, but the agent of the road was before him with the third; for, just as he was approaching his prey, writ in hand and borne upon one locomotive, the ingenious employee switched him off, and, while his own path suddenly led into space, he saw his prize gently slide down the grade out of his reach, and there get up the steam necessary to make good its escape.

The Barnard receivers were thus fairly installed in possession of the Binghamton end of the road, of the point where it connected with the Erie. An assistant superintendent of the Erie Railway was at once appointed superintendent of the Albany & Susquehanna, and a conductor of the same road was ordered to take out the regular train to Albany, which was still standing at the platform where it was seized. Matters were evidently approaching a crisis. Different sets of receivers were operating the two ends of the road, and two sheriffs, bearing conflicting processes, were rapidly approaching each other on trains drawn by the locomotives and directed by the officers of the hostile factions. This condition of affairs was telegraphed to the Ramsey train at Harpersville, twenty-five miles from Binghamton, and, after some consideration, it was determined to proceed no farther. Meanwhile the news of the Binghamton proceedings caused Superintendent Van Valkenburg to decide on vigorous measures. In the first place he proceeded to clear the offices of all hostile influences. Mr. Fisk had not that day been allowed within the premises. Repeatedly, in company with the sheriff and

others, had he presented himself and energetically demanded admission. It was of no avail. It was different with Mr. Courter, his fellow-receiver; he had been treated with a degree of courtesy, and indeed had been permitted to sustain the character of a nominal receiver within the offices. This gentleman was, however, now notified by Mr. Van Valkenburg that the farce of a double possession was to terminate then and there. On Saturday, in the little unpleasantness with Mr. Fisk, Van Valkenburg had given some indications that he was a man of few words and decided action. The hint had not been thrown away. Mr. Courter, after a formal resistance just sufficient to establish the fact of forcible ejectment, withdrew from the premises, and the Barnard receivers abandoned every pretence of actual possession of the Albany end of the line. Van Valkenburg's next move was to telegraph an order over the road, stopping every train where it then was; all movement was thus brought to a stand. An extra train, carrying a hundred and fifty men from the workshops, under command of the master mechanic, was then sent up the road to be ready for any emergency. Having thus cleared everything away for action, the next move of the other side was in order.

The representatives of this other side were meanwhile advancing from the opposite direction; upon the train were the sheriff of Broome County, the Erie superintendent of the road, and some twenty men. As they moved along, the orders of Judge Barnard were served at each way station, the old officials of the road were displaced, and Erie men were substituted for them. So eager, indeed, was the sheriff in the discharge of his duties, under the electro-writ of assistance, that he not only served an order, the illegal character of which he must have more than suspected, throughout his own county, but he continued to do so throughout the adjacent county, and, indeed, seemed not indisposed to extend his bailiwick to Albany. At Afton, about thirty miles from Binghamton, a despatch was received from Mr. Van Valkenburg, notifying the party that any farther advance would be at its own peril.

The Albany people were then lying at Bainbridge, six miles farther down the track. After some hesitation, which involved a great deal of rapid telegraphing and no inconsiderable delay, positive orders for an advance came to the Erie party, followed shortly after by reinforcements. It was now deep in the night, but the train at last was started, and moved slowly and cautiously towards Bainbridge. The Albany party was prepared to receive it. They lay on a siding, with a patent frog — a little machine made to slide trains on to the rails, but equally calculated to slide them off — attached at a convenient point to the main track. In total ignorance of this bit of strategy, the Erie people felt their way along, when, just as Bainbridge, to their very great relief, seemed safely reached, their locomotive gently and suddenly glided off the track, and their train was brought to a stand-still. The instant this took place the Albany train moved up the siding, passed triumphantly by its disabled opponents and on to the main track above them, where it took its position in their rear, effectually cutting off all retreat. As the Erie party tumbled out of their train, they were met by Mr. Smith, one of the counsel of their opponents, who glanced at the process under which they were acting, and at once pronounced it worthless. There was no alternative; they had fallen into a trap, unconditional surrender was all that remained. This was accordingly submitted to, and Sheriff Browne of Broome County, and all his *posse comitatus*, were helped off their train and duly served with the order of Judge Peckham, restraining them from doing or attempting anything in aid of the receivers appointed by Judge Barnard.

Having disposed of this little party by capture, and it being now broad day, the Ramsey commander decided vigorously to follow up his advantage, steaming up the road towards Binghamton. On the way he displaced the recently appointed Fisk men, and replaced the ejected Ramsey men in charge of the various stations. Everything proceeded well until the train approached the long tunnel, near Binghamton. This was the battle-ground chosen by the Erie party. Here, close

to their base of operations, and near their supplies, they had massed their reserves, after the total and ignominious capture of their advance guard.

The tunnel is some twenty-two hundred feet in length, and is about fifteen miles from Binghamton. It marks the last summit the road crosses in going west, and, on either side, is approached by a heavy ascending grade and round a sharp curve. The Albany party arrived at this point at about ten o'clock, and here halted. On the other side of the hill, trains were bringing up workmen from the Erie shops, under the officers of the Erie road, until Mr. Fisk's threat in regard to "any number of men" seemed tolerably certain to be verified. It was a motley collection, the control of which must have considerably puzzled the general superintendent of the Erie Railway, who found himself in command. A more unwieldy body could not well have been got together. The men were wholly unarmed, except, perhaps, with sticks, which one party was detailed to cut in the neighboring woods; they had been hastily summoned from the shops, and were ignorant as children of the crazy errand they were about, nor had they the slightest enmity towards those opposite to whom they stood in ludicrous array. This, however, was not the case with the Susquehanna people. They were now thoroughly stirred up and ready for anything. Most of them had for years been in the employ of the road, and many were personally attached to Mr. Ramsey; they regarded the effort to dispossess him as aimed also at themselves. They were, too, flushed with the success at Bainbridge, and possessed with a strong *esprit de corps*. Such being the opposing elements, they lay waiting for peremptory orders, which in any case had to come from Albany, for there both Fisk and Van Valkenburg kept their head-quarters. From time to time reinforcements came up, until by seven o'clock the Erie party was raised to an unwieldy mob of some eight hundred men, while their opponents numbered hardly less than four hundred and fifty. The Erie people now decided to try an advance, and accordingly a train well loaded with combatants was set in motion. It moved

slowly through the tunnel and emerged safely from the eastern end, merely having to replace a single rail. This done, the advance was continued. Meanwhile the Albany people were fully notified of the impending danger. Accordingly, when the Erie people had replaced the rail and started, they started too, and thus the first intimation the raiders had of danger was the discovery, on rounding the sharp curve, of an approaching locomotive, angrily puffing up the grade, and apparently bent on mischief. This was more than they were prepared for. Their whistle at once signalled danger, which the Albany locomotive replied to by signalling to them to get out of the way. In vain the Erie conductor jumped off his train and gesticulated like a madman; in vain the Erie engineer tried to back out of the way; the curve was here so sharp and the incline up which it was necessary to back in order to return into the tunnel was so great, that it was instantly evident, not only that the Albany people wanted a collision, but that their wish was to be gratified. Though the Erie engine could not reverse, it had stopped, and the heavy grade kept down the speed of the Albany train, so that the collision rather indicated an *animus* than inflicted an injury; nevertheless, in a moment the two locomotives came together with a sharp shock. The damage done was not great; guards and cow-catchers were swept away, head-lights were broken, and the attacking locomotive was roughly thrown from the track; but the collision of engines was the signal for a collision of men. Before the trains had met they were emptied of their loads. Such a system of opposition was something on which the Erie people had not counted, and when, simultaneously with the collision, the Albany men rushed upon them with loud shouts, they were at once completely demoralized, and broke into a precipitate flight. Their locomotive, with broken lights and a pistol-bullet through its cab, vigorously reversed, until it had reversed itself out of the *mêlée* and back into the tunnel, while they themselves took to their heels and scampered back towards Binghamton. A few remained on board the train, a few stumbled back through the darkness of the

tunnel, but the greater part, to whom their terror perhaps lent wings, scaled the mountain like a sand-hill in their flight.

Victory had again rested on the Albany banners; the Ramsey star was in the decided ascendant. While one party of the Albany men followed up the disorganized enemy, others busied themselves in getting the locomotive on the track. This was soon done, and then they, in their turn, locomotive and all, advanced through the tunnel to complete the rout of Erie. The last-named party had, however, rallied a little in the breathing-time afforded them, and were now at least equal to the task of making a very considerable noise. This, it is true, was not much, but in the growing darkness it was enough. In fact it might be said that one party was afraid to go forward, and the other did not dare to attack. The element of the ludicrous was becoming very pronounced, notwithstanding the earnestness of the combatants. Thus, as the shades of night deepened, they stood apart and defied each other with loud shouts and excessive profanity. A few conflicts of the more daring, a few scattering pistol-shots, a few wounds, none of them serious, told the whole story. Yet it was a riot, and a shockingly lawless one; nay, more, it was an alarming one. It was not a sudden fight between ignorant and angry mobs; it was the attempt of two great corporations to levy war on each other with organized force. How far it might have gone cannot be said, for, in the midst of the tumult, the drums of the Forty-fourth Regiment of State Militia were heard approaching, and at this not unwelcome sound the combatants desisted. The Erie people held possession of the field. The Albany party sullenly withdrew, locomotive and all, through the tunnel, which they blocked up with a freight-car, and then, after breaking down a trestle-work or two, with a view of preventing another attack, they retired to Harpersville, where they established themselves for the night.

Meanwhile the whole State was in an uproar over the scandal of these lawless acts. All along the line of the road, and indeed almost everywhere, the feeling was strongly in sympathy with Mr. Ramsey. It could not well be otherwise; with-

out knowing anything of the circumstances of the particular case, a strong presumption was now inevitable wherever the Erie management made its appearance in any complication. At Albany the public sentiment was peculiarly strong; meetings were held, a perfect ovation greeted the arrival of the runaway locomotive from Binghamton and the captured Erie train; crowds collected round the station, and were addressed from the cars by city demagogues on their way "to the front." At last, also, the point was reached at which, if the authorities did not interfere, the people would organize and take matters into their own hands. The militia had already been called upon by the civil authorities of Broome County and had responded to the call, and now Governor Hoffman was recalled from his summer sojourning-place by telegraph, and reached Albany at almost the very time that the Forty-fourth Regiment arrived at the scene of riot. He at once took decisive measures. Orders were telegraphed to the sheriffs along the line of the road, directing them, in all cases of doubt, to treat any party in actual possession under a judicial order as being in rightful possession. The military were to be called upon only in case of extreme emergency, but, if the disorders continued, the whole district was to be placed under martial law.

In spite of these new developments, the Erie party was neither discouraged nor idle. The papers of Tuesday contained a long letter from Mr. James Fisk, Jr., setting forth at great length the magnitude of the public interests for which he claimed to be contending. The literary shortcomings of this production were excused on the ground of "quick, sharp work on a stamping ground new to me." Not content with this bid for moral support, on the evening of Tuesday, when the offices of the company would naturally have been deserted, Fisk and Courter made another effort to obtain possession of them. Armed with an order of Judge Barnard's, staying all proceedings under Judge Peckham's writ of Monday, and further fortified with an additional writ of assistance, the brother receivers made their appearance in a carriage accompanied by the sher-

iff. Van Valkenburg was, however, on the ground, and, for a moment or two, things had an unpleasant look ; so unpleasant, indeed, that Mr. Fisk now changed his tactics. Instead of bullying he attempted bribing ; all the braggart confidence of Saturday was gone, and his demeanor was chiefly marked by an excessive care for his personal safety. As for the sheriff, the indications of violence were sufficiently pronounced to induce him to think it inexpedient to proceed further. Probably they would have gone away empty-handed, had not a new judicial power just then stepped into the arena. This was Mr. Justice Clute, of the Albany County Court, who issued his order directing the arrest of the Barnard receivers for conspiring to take possession of the Albany & Susquehanna Railroad by force of arms. In obedience to this order the two indignant receivers were at once taken to Judge Clute's office, whence they were not released until they gave bail for their appearance next morning. The *coup de main* was a failure ; but Mr. Fisk relieved his feelings by graphically describing the attempts which had been made to assassinate him.

The next morning Judge Peckham began the day, not exactly by setting aside his brother Barnard's recent orders, but, more courteously, by fixing a day on which cause should be shown why they should not be vacated, and, meanwhile, granting a temporary stay of all proceedings under them. The judicial equilibrium was thus restored. At last Governor Hoffman put a final stop to the judicial farce by notifying the sheriff of Albany that he was included in the directions of the previous day. The Ramsey party, being in actual possession at Albany under a judicial order, forthwith applied to the police for protection, which was immediately granted them. Meanwhile, Governor Hoffman received information of the tunnel conflict. He at once notified the counsel that such proceedings must stop, and that some agreement must be arrived at. In due time the counsel notified the Governor, in reply, that they were utterly unable to agree on anything. His Excellency thereupon very emphatically and very properly replied that he neither knew nor cared anything for their com-

plications, but he did propose to preserve the public peace. If those interested could not agree on some other course, it only remained for him to declare the whole district in a state of insurrection, and to operate the road as a military one. This declaration produced a document, signed by all the receivers, requesting his Excellency, as a species of nondescript superintendent, mutually agreed upon, to take possession of and operate the road. This very anomalous trust was accepted by Governor Hoffman, who issued a *quasi* military order, detailing Inspector-General McQuade as his deputy superintendent, and directing him to take possession. This was certainly a fitting climax to all that had gone before. A receiver is an officer of the court. His possession is the possession of the court. The courts in this case were fighting over the control of a railroad, and were forced to ask the Executive to hold the bone of contention while the judiciary "had it out" amongst themselves. Thus the Executive, in the utter break-down of the law, had to accept a trust which did not belong to it, and proceed to perform duties which it had no right to perform, under an authority conferred by certain persons who had no such authority to confer. And all this because a man was selected in caucus and elected at the polls a judge in the first judicial district of New York, who fairly represented the moral and intellectual level of the majority of the voters who had elevated him into infamy. It was no accident; there was no element of chance in the case; it was the working of a system which produced a logical and natural result.

Though the possession of the road was thus disposed of, certain little outstanding accounts remained to be adjusted. The vacating of Judge Peckham's orders by Judge Barnard, and the staying of proceedings under Judge Barnard's orders by Judge Peckham, were matters of too common occurrence to call for notice. The interference of Judge Clute, however, a mere county judge, was something "most tolerable and not to be endured." And now for the first time in these proceedings Judge Barnard appeared upon the stage as something more

than a name. The funeral of his mother had taken place at Poughkeepsie on the previous day; on that day, also, orders had been forthcoming from him in these Susquehanna suits, purporting to be granted on the behest of Mr. Shearman, between 11 A. M. and 1 P. M., at special term at the court-house in New York City. The minutes of the court-house show that the special term at the court-house in New York City was held on this day by another magistrate. Upon the morning of the 11th, however, he at length appeared in proper person, and, after obtaining from him the usual order, setting aside Judge Peckham's action of the day before, Mr. David Dudley Field, of counsel for the Erie Railway, read to the court the return of the sheriff, setting forth the resistance he had encountered on the previous afternoon in his attempt on the Susquehanna offices. Upon his motion the court ordered a peremptory writ, not bailable, to issue, commanding the sheriff to arrest Messrs. Pruyn, Ramsey, and Van Valkenburg, and to produce their bodies in court without delay. Under this process these gentlemen were arrested that afternoon, while in the Executive Chamber, and were held in duress awaiting conveyance to New York. Of course they none of them, at this time, seriously contemplated any such journey. Recourse was again had to Judge Clute, and the non-bailable prisoners were carried before that magistrate on a *habeas corpus*. The subject was taken under consideration by him until next morning. The opponents of Mr. Fisk had shown themselves not inapt scholars, and it naturally occurred to them that processes for contempt might be made to apply to him as well as to themselves. The same thought suggested itself to Mr. Fisk, as soon as he found time to relax from the efforts incident to "quick, sharp work on a stamping ground new to him." He had once before fled to Jersey City, pursued by Barnard; he now incontinently retired to New York, terrified by Peckham. In fact, he abandoned his new "stamping ground" with great precipitation. Flying on board his own steamer, which was lying in the stream ready to serve either as an ark of refuge or a stronghold for prisoners, he was conveyed at once to New

York, where he secured himself in the recesses of Castle Erie.

The next morning Judge Clute incontinently discharged the prisoners held under Judge Barnard's writ. It is almost unnecessary to say that his action was apparently in disregard of law; these proceedings throughout were open to this criticism. It was perfectly proper for Judge Clute to issue his writ of *habeas corpus;* when it came, however, to releasing prisoners held by a sheriff on a writ issued for contempt from a court superior to his own, the action of his Honor was, perhaps, more spirited than correct in practice. The prisoners, however, were released, and it only remained for the sheriff to make a return of the facts by mail to Judge Barnard. The matter was then brought once more before that magistrate, this time by Mr. Shearman. The colloquy that then took place was characteristic and well calculated to fill with terror the hearts of Peckham and Clute, no less than of Pruyn and Ramsey. The counsel began with a comparison. Judge Peckham, it appeared, had signed certain of his orders at his office; Judge Barnard, it will be remembered, was supposed to have signed his somewhere in the immediate neighborhood of a theatre. Bearing these facts in mind, one cannot but appreciate the delicate sense of honor implied in the following opening remark of the counsel: "Unlike our opponents, who invite the judge to their private office, and from which he issues his orders as if from the court, we have never sought to consult your Honor in private, and whatever we have asked has been asked openly in court, and in accordance with our firm conviction of our legal rights." The peculiarly elevated tone of Judge Barnard's court being thus established, the colloquy proceeded as follows: —

*Judge Barnard.* I have been looking into this matter with some degree of care, and am of opinion that J. H. Clute, signing himself as county judge of Albany County, entertained jurisdiction of this matter as a criminal contempt, well knowing that it was a civil contempt. I am not quite sure but he should be brought before me to be punished for contempt.

*Mr. Shearman.* I intend to follow these men as I have followed others. Four months ago we were in pursuit of certain parties, and they were finally overtaken as their coat-tails were disappearing behind a safe. I shall follow these men, if it is necessary and possible, to the end of time.

*Judge Barnard.* I have some years to sit on this bench, and would as soon devote them to this as to anything else.

*Mr. Shearman.* I am a young man also, having perhaps forty years at my disposal, and I am willing to devote them all to the pursuit of these men.

The first step in this forty years of persistent strife was thereupon at once taken by directing the sheriff to make a more detailed return. The individuals in question had, however, already fled the State, and Judge Barnard does not seem finally to have made up his mind to try conclusions with Judge Clute. Meanwhile the friends of the fugitives began to think that these proceedings had exceeded the limits of a jest. To fly the State was an ignominious thing; it seemed to imply a confession of wrong-doing; it could only be justified by the uncertainty which existed in regard to the limits of judicial power in cases of contempt, and especially of the exercise of that power by Barnard himself. He had indicated his *animus* by his remarks in court. Resort was had to negotiation. One of the Ramsey counsel went to New York and threw himself in Barnard's way. The Judge assured him that there was no vindictiveness in his mind, and this interview led finally to some distinct understanding, reassured by which the fugitives one by one came back and presented themselves in court. After this the matter took the usual course. A reference was ordered, a mass of evidence was taken, the case dragged its slow length along, bail was reduced, a multiplicity of orders were issued, the wrath of Barnard gradually subsided, and, at last, the battle of the judges died away in a faint rumble of evidence, affidavits, explanations, and orders, and then was heard of no more.

One further order, and one only, was made at about this time, to which subsequent events lent a deep consequence. The Erie party had been completely foiled in its efforts to get

possession of the much-coveted books. Now and again they would obtain some clew which led them to suspect their presence somewhere, but when they were sought they were gone. Agents went out of the State hunting for them, parties were examined in the State concerning them; a strange ignorance apparently existed as to their whereabouts. They seemed ubiquitous; at one time in Albany, at another in Pittsfield, and then suddenly in Troy; but always in the undisturbed possession of some friend of Mr. Ramsey. The Erie party was, in their absence, wholly unable to estimate its own relative strength as compared with that of its opponents. It was known, however, that a portion of the forfeited stock had been reissued, and now stood in the names of Leonard, Groesbeck, and others. Leonard was a director, and in negotiating the sale for the company of certain of its second mortgage bonds and stock had reserved to himself a portion of the stock as a species of brokerage commission. Mr. Leonard, however, was one of the directors in close sympathy and alliance with the Erie management, and, in regard to the stock reissued and standing in his name, for which in reality no consideration had been paid to the company, it seemed unnecessary to institute any proceedings. Not so as regarded that issued to Groesbeck and paid for by him. The reissue of this last stock was pronounced flagrantly illegal and void, and Judge Barnard was accordingly petitioned to appoint a receiver for it. The order was immediately granted, and Mr. William J. A. Fuller, an individual who had once been a clerk in Mr. Field's office, was named receiver, and directed to take immediate possession of the property. Armed with this order, and accompanied by a sheriff's officer, the new receiver proceeded at once to Mr. Groesbeck's office and demanded his scrip. Upon Mr. Groesbeck's demurring somewhat at being deprived of his property in this summary way, Receiver Fuller proceeded to explain to him the mysterious terrors of a writ of assistance, which almost unknown process he darkly intimated he had somewhere at hand. Mr. Groesbeck was tolerably familiar from long experience with all the usual judicial processes which are

auxiliary to New York financial combinations, but writs of assistance were implements strange to him. The element of the unknown seems to have produced the desired effect, and Mr. Groesbeck delivered to Mr. Fuller certificates for nine hundred shares of stock. Under the same authority this gentleman further collected other certificates representing sixteen hundred additional shares. His duty was simply, at the most, to hold these shares pending the result of litigation as to the legality of their issue; he subsequently, as will be seen, took what may be called very enlarged views of these duties. Both parties had now gathered up their strength for the election which was to take place on the 7th of September.

It was provided in the by-laws of the company that the polls should be opened at twelve o'clock on the day of election, and should continue open for one hour; no transfers of shares were to take place during the thirty days next preceding the election; three inspectors were provided for, to be chosen each year by the stockholders; it was their duty to conduct the election; they were to be provided by the secretary with a list of stockholders entitled to vote, and to them also upon that day the transfer book was to be submitted. To this state of the law and the facts the two parties prepared to conform their plans. It was in the first place incumbent on the Ramsey party to restore the books to the offices of the company. This was done very secretly on the night preceding the election. A certain fictitious consequence was sought to be attached to the way in which this was done, owing to the fact that, when the messengers arrived with the books, instead of finding everything quiet and deserted as they had hoped, they discovered a large crowd gathered in front of the offices watching a conflagration across the river. The nature of their business was thus sure to be discovered. This was just what they wished to avoid. After a moment's reflection it was decided to drive with the books to the rear of the building and put them in through a window. A basket and cord were found, the books were hauled up to the second-story window by the secretary, and by him secured in the safe of the com-

pany. Had the books, under the circumstances, been carried in through the front door, an officer armed with a warrant, and accompanied, if need be, by pick-locks and blacksmiths, would, in all probability, have been after them before morning. As it was, their return was a secret until it ceased to be of importance. Many unjustifiable features were assigned to the proceeding by the Fisk counsel; the one thoroughly unjustifiable one in their eyes was probably its success. It was never denied that the secretary of the company had, after the removal of the books and while they were secreted, made many entries in them. These, however, were all of transactions concluded prior to the day when the books were to be closed, and included all of those transactions, whether favoring Ramsey or Fisk. Though much was hinted in regard to these entries, during the searching investigation they were subjected to in the subsequent trial, no instance of abuse of trust was even specifically alleged, much less proved. Nor indeed is it probable in itself that any such improper entries were made, as those who made them must at the time have known that they were unnecessary so far as securing a majority of the stock was concerned.

The aspect of affairs was not, on the whole, propitious to the Erie party as the day of election drew near. Their opponents held the books, which forced them to act very much in the dark, and the inspectors of election were understood to incline to the Ramsey interest. That a majority of the stock also inclined to it was a matter of less moment. The situation was full of difficulty; but the men called upon to meet it were full of resource. Their preliminary step was naturally to lay in a sufficient supply of judicial orders. The regular inspectors must, in the first place, be got out of the way. It was ascertained that they were not stockholders; the by-laws required that the inspectors should be chosen from among the stockholders. The Fisk-Gould counsel at once applied to Judge Clerke, a colleague of Judge Barnard's, in the First District, and that magistrate granted, as a matter of course, an *ex parte* order, restraining the inspectors from acting as

such. Having obtained this process from Judge Clerke, and filed it away for use at the proper moment, the counsel next applied to Judge Barnard. They quietly commenced a suit in the name of the Albany & Susquehanna Railroad Co. against Messrs. Ramsey, Pruyn, Phelps, and Smith, the president, receiver, secretary, and leading counsel of the company, to recover damages for the abstraction of its books. On this complaint they obtained from Judge Barnard, on the evening of the day preceding the election, an order of arrest against the defendants, with bail fixed at $25,000. This, be it remembered, was a judicial proceeding in New York, and not in Constantinople. Thus panoplied in orders, all parties repaired on the 6th to Albany. Mr. David Dudley Field came from the pleasant shades of his summer retreat among the hills of Berkshire, and Mr. Shearman, his associate in the practice of the law, had, for the nonce, quitted his offices in the Grand Opera House, in order himself to be at the right hand of his chief in conducting those delicate proceedings so skilfully and secretly planned in New York. The former gentleman was doubtless actuated only by a high sense of his professional duty to his clients, but Mr. Shearman may have been braced for the approaching crisis by the fell purpose he had recently avowed of pursuing even for forty years the miscreants who had failed properly to respect the orders of the distinguished magistrate with whom his own relations were such models of propriety. Having arrived in Albany, the last-named gentleman repaired at once to the capitol, where he carefully informed himself as to the details of the election. This done, a general conference was held at the Delavan House, and the plan of operations was matured. The first object was to secure the organization of the meeting; that once done, arrangements of a satisfactory nature had been made to hold it. The trap was to be sprung just before the hour appointed for the election, when the regular inspectors were to be enjoined by the service upon them of Judge Clerke's *ex parte* order. The whole regular machinery being thus dislocated, a preliminary organization was to be effected, three new and

thoroughly sound inspectors were to be chosen, which would insure the control of the election and the subsequent possession of the Susquehanna Railway. Every detail was arranged, every person who was to play a part was designated and carefully taught his *rôle*. Such was the extreme caution used that Mr. Shearman himself wrote out the appropriate resolutions, and indorsed upon them the order in which, and the very second at which, they were to be offered; while Mr. David Dudley Field personally handed certain of them to the leading performers, with further verbal instruction. Early the next morning there took place one of the most remarkable comparisons of watches on record. A special messenger visited the Dudley Observatory, and obtained the exact time, which was by him communicated to every active performer in the approaching farce; or, rather, to all except the vulgar majority, to whom time was of no consequence, they being hired by the day, and constituting the fierce democracy of the occasion. These gentlemen arrived by the morning train from New York; they were a very singular party, such as is more frequently seen in the neighborhood of the riotous election precincts of New York City than in the offices of respectable corporations. A breakfast was negotiated for them by an employee of the Fall River line of steamers, which constituted "Admiral" Fisk's naval command, at the saloon in the station; and there they stood and fed at the counter, as rough a set of patriots as ever stuffed a ballot or hit from the shoulder. Some of them had coats, and some had not; their clothes were in various stages of dilapidation, as also were their countenances; open shirts disclosed muscular breasts, and rolled-up trousers stockingless feet; one man saved himself the trouble of rolling up both legs of his trousers by having only one; they emphatically belonged to that class technically known as "roughs," a class subsequently defined by a witness as "men with scarred faces and noses, and black eyes." Under the circumstances it was little to be wondered at, that, while they indulged in a "square meal," the keeper of the saloon gave directions to have his silver counted. Pending the feeding

of the democracy, their proxies were in course of preparation; at last all was ready, and between eleven and twelve o'clock they were marched up fifty strong to the offices of the company.

Everywhere things proceeded exactly according to plan. On his way in a carriage to the corporation offices, Mr. Shearman happened to see the injunction of Judge Clerke served on two of the three inspectors as they were on their way to the meeting. This settled two points; the injunction was a surprise; and the regular inspectors were disposed of. Judge Barnard's more important order was meanwhile sent to the sheriff, and the messenger was specially instructed by Mr. Shearman himself to hand it to him with this Roman injunction, "Sheriff, do your duty!" This instruction was given at nine o'clock, but, curiously enough, the official had to consult his lawyer about the service of the process, and this lawyer happened to be one of Mr. Fisk's numerous legal advisers; with that gentleman he remained in counsel until half past eleven o'clock, when at last he was advised to make his arrests at once. By this time all the parties were collected at the offices of the company. It might fairly be called a mixed society. Mr. Van Valkenburg had tendered to the Governor's receivers a guard of men from the shops of the road, but these had been refused, and a large force of Albany police were on duty in the building. Some thirty of the employees of the company were on hand against an emergency, but under positive orders not to enter the offices until sent for. Up stairs was a large array of stockholders, directors, real and contingent, a few receivers, and a score or two of counsel. Then came the New York importation of ruffians, who were divided into squads under the command of divers officials of the Fall River boats, the Erie Railway and the Grand Opera House; thus marshalled, and each man proxy in hand, they were marched into the room and formed in line at one end of it. Besides these there was present a choice collection of Albanians of somewhat similar character, either neutrals or inclined to Mr. Ramsey. How they got there did not appear, but if the instructions to the police

to allow no one but holders of certificates of stock to pass up stairs were enforced that day, these certificates were certainly held by a great many strange characters. The Erie party, prominent among whom were Messrs. David Dudley Field, Thomas G. Shearman, and James Fisk, Jr., took possession of the directors' room, which their assortment of "New York stockholders" wellnigh filled; in the adjoining room were Messrs. Ramsey, Pruyn, and their friends and advisers.

Exactly at fifteen minutes before twelve o'clock, by observatory time, one Colonel North, to whom that *rôle* in the Erie parts had been assigned, moved the organization of the meeting. No opposition was encountered, and the gentleman cast for the part of chairman was duly installed. The resolve indorsed "No. 1, Immediate," was then recited by Colonel North, Mr. Shearman standing at his side watch in hand, and the old inspectors were voted out of office and the new ones in. The officers thus elected at once retired to the treasurer's room, where the poll was to be held, whither they were immediately followed by Mr. Shearman, still watch in hand; having satisfied himself that all was in readiness there, this master of ceremonies immediately returned to the side of Colonel North and resumed his comparison of timepieces. At last he said: "It is now one minute of twelve; keep your watch open and be sure that you offer these resolutions at a little after twelve, and not before; and, in order to make sure, wait a few seconds after twelve, but not more than fifteen seconds." With this parting injunction he left the Colonel to his own devices, and "at thirty seconds of twelve" returned to the inspectors' room, just in time to find an injunction served on those officials. It was issued on the complaint of David Groesbeck, and enjoined an election unless the stock held by him was first voted on. Now, at last, was developed the entire significance of the *ex parte* order under which Mr. William J. A. Fuller was made receiver of this stock. There were twenty-five hundred shares of it; Mr. Groesbeck had paid for several hundred of them; he was at that very moment in the next room; he was on every ground bitterly opposed to the Erie direction, and

to the parody of an election then in process ; Mr. William J. A. Fuller was the receiver of the stock, and it was to this receiver, now conveniently standing at his elbow, that Mr. Shearman turned and remarked : "An injunction has been served restraining this election from going on, unless the votes on the twenty-four hundred shares which you hold are first received, and you had better vote." Thus appealed to, Mr. Fuller modestly replied that he had not intended to vote at this election, but, having been appointed receiver, he deemed it his duty to do all in his power to preserve the property, and concluded his statement by giving as a reason for his vote that the ticket which he offered was composed of men of the highest character and ability, whose election would best secure the rights of all parties to the litigation. At the close of these remarks he actually voted, and the curious spectacle was exhibited of a court of equity taking a man's stock away from him on the ground that it was illegally issued and could not be voted on at all, and then proceeding to vote on it itself, before the man's face and against his wishes. Viewed calmly, and after the event, such a proceeding strikes one chiefly as an extremely droll joke. The climax of the humorous, however, was not attained until some months later, when Mr. Fuller gravely stated in court that, as a receiver, he considered it his duty to vote on stock without consulting the wishes of its ostensible owner, and that for his services as receiver in this case he had as yet received no remuneration, but expected the regular fees, amounting to $15,000. After Mr. Fuller had thus relieved Mr. Groesbeck of the trouble of voting, and after the meeting in the next room had gone through a nominal reorganization to meet the letter of the law, the polls were declared open. The inspectors were withal curiously careless, or too intent on the passage of time to think of aught else ; they certainly neglected to be qualified by taking oath as to the performance of their duties, which was specially prescribed in the by-laws ; neither did they use any ballot-box, other than the straw hat of one of their number. In this, however, the ballots were deposited, and the election went

briskly on for some fifteen minutes, when, under the names of John Doe, Richard Roe, and James Jackson, the inspectors were again enjoined, this time from any further proceedings. Most of their tickets had, however, already been voted, and this injunction was violated by the reception of others, subsequently offered, only in a moderate degree.

Meanwhile events did not stand still in the little library adjoining the directors' room, where Mr. Ramsey and his friends were collected. The sheriff of Albany, after leaving the office of his legal adviser, proceeded to "do his duty." As Mr. Ramsey was intently listening in the president's office to Colonel North, who was moving the organization in the next room, some one suddenly touched his arm, and he became conscious of the sheriff at his side. Here was a thunderbolt. At the very instant when his presence was most necessary, when all depended on the full possession of his liberty and his faculties, he found himself, the secretary of the company and its legal adviser, under arrest. The thing could not have been better timed. To understand the full possible effect of this move, it is necessary to bear in mind a remark made by Mr. Shearman in his subsequent testimony, though in another connection: "I did n't want to lose a second's time, because I knew the value of time in this case, and I knew that the whole question would have to depend upon the question of which meeting was organized first." The officials of the road were therefore arrested, by mere accident, as it was claimed, just when they should have been organizing their meeting. Nor did the possible benefit to be derived from this measure stop here. The election was limited to one hour, and the sheriff was instructed "to do his duty." He might have effected his arrest at ten o'clock; but had he done so, the parties would have been bailed at once, and the arrest might as well not have been made. Having been made at exactly the right moment, the sheriff might now further construe it to be his duty to remove the prisoners to his office, there to arrange their bail. The votes on which Mr. Ramsey relied were, of course, held by him in the usual form of prox-

ies; they were, in fact, on this day so cast by him. Could he, therefore, be held in durance, away from the offices, by any fictitious delays and objections, for one short hour, the election would be over and irrevocably decided against him. The construction the sheriff should give to "his duty" in the premises was very vital, and fully warranted his lengthy interview with that gentleman who was the common adviser of himself and the Erie Railway Company. The whole proceeding certainly spoke volumes for the ingenuity and resource of those who engineered it. In its style it could not have been improved.

Mr. Ramsey was thus a prisoner. He proposed at first to leave the room to consult his friends, but was requested by the sheriff to remain in it, and here he was soon visited by Mr. David Dudley Field, of counsel for the Erie Railway Company, who satisfied himself that the sheriff was doing "his duty" by taking a comprehensive glance at the situation. Finding this greatly to his mind, he then proceeded, with a smile indicative of profound satisfaction and with his thumbs in the armholes of his waistcoat, to inquire of Mr. Ramsey as to the present condition of his health. Mr. Ramsey has the reputation of being a remarkably cool and imperturbable man, so that now, when his counsel, Mr. Smith, entered the room in a state of intense excitement and indignation, and also under arrest, he received simply a direction to go back and attend to the election, while Mr. Ramsey himself effected the bail arrangements. It is not clear whether the sheriff lacked nerve to construe his duty as he might have done, or whether the delay already occasioned was considered sufficient; at any rate, though he certainly arrested his prisoners at exactly the proper moment, he did not remove them from the building. He was, indeed, even provided with blank bail bonds, which were produced and filled, though not until objection had been made to the security of one or two gentlemen notoriously worth millions; and this done the prisoners were released. All this had occupied half an hour; on the theory of Mr. Shearman it was now too late, the moment had

passed; the *coup* had been completely successful. Mr. Smith had, indeed, gone back and organized a stockholders' meeting in the hall of the building; but not until ten minutes after twelve, and when the polls of the other organization had been long open. The Erie party were, in their own belief, in possession of the Albany & Susquehanna Railroad beyond a peradventure.

Before going on with the narrative, a few words may here be not out of place concerning the much-discussed question of the limits, if there be any, of the duty which counsel owe to their clients. The celebrated dictum of Lord Brougham in this regard is sufficiently general in its terms: "An advocate, by the sacred duty which he owes his client, knows, in the discharge of that office, but one person in the world, THAT CLIENT AND NONE OTHER. To save that client by all expedient means, to protect that client at all hazards and costs to all others, and among others to himself, is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction which he may bring on any other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on reckless of the consequences, if his fate it should unhappily be to involve his country in confusion for his client's sake!"

Certainly no counsel could have acted more fully up to both the letter and spirit of this famous rule than did Messrs. David Dudley Field and Thomas G. Shearman, of counsel for the Erie Railway Company, on this notable occasion. They even "cast to the wind" the single faint limitation conveyed by Lord Brougham in the words "to *save*" and "to *protect*" by all "expedient means"; and, in the intense fervor of their devotion to their clients, had recourse in aggressive proceedings to processes of law which were subsequently judicially characterized as procured "in aid of fraudulent purposes." Attending one's clients to corporation meetings, at the head of a band of "rude, rough, and dangerous persons" and there acting as the master of ceremonies, through the parody of an

election, was a case which undoubtedly Brougham would have included in his definition, had it occurred to him; but it probably escaped his notice, from the fact that, since the fall of the Roman Republic, such proceedings have not been usual. The ingenious device, also, of arresting one's opposing counsel and holding him to $25,000 bail, at the moment when his professional services are likely to become peculiarly necessary, is a feature in legal amenities with which the English barrister could not have been expected to be familiar. A high authority has now, however, established these as part of the duties of the American advocate. Instances of similar devotion will, therefore, unless the now obsolete practice of disbarring should chance to be revived, probably hereafter become more common than they hitherto have been. The use of unusual processes of court, unpleasantly suggestive of *lettres de cachet*, quietly procured and suddenly brought in play, would seem also to have met of late with an undeserved odium. Whether these will again arrive at the great efficiency as an element in litigation which they once attained in France will, perhaps, depend upon the degree of fidelity with which sheriffs do their duty. For the shortcomings of such officials, advocates naturally cannot be held accountable, even by the most exacting of clients. The client, moreover, in whose defence Brougham was prepared, if need be, "to involve his country in confusion" was the Queen of England; which, indeed, cannot but cause the deeper sense of a professional devotion, no less reckless, exerted in furtherance of the schemes of Mr. James Fisk, Jr.*

* It ought, perhaps, to be stated in this connection, that the opinion commonly entertained of the transactions with which the names of Fisk and Gould are associated was not apparently shared by their counsel. These gentlemen, whose close acquaintance with the facts in the case must certainly have qualified them to form an intelligent judgment, have made no concealment of what that extra professional judgment was. Upon this point Mr. Shearman expressed himself very explicitly before a legislative committee at Albany on the 31st of March, 1870, six months subsequent to the Susquehanna proceedings. He then paid the following high tribute to himself and to Messrs. Field, Fisk, and Gould: —

"If I were to speak from my own personal judgment of the management

To return from this abstract digression to the narrative, little remains to be said of the election after the release of Mr. Ramsey was effected. While bail was being procured, and the necessary bonds executed, a second meeting had been organized by Mr. Smith in the hall before the offices, and this meeting had proceeded to choose inspectors, who were duly sworn and received from the secretary the prescribed list of stockholders. They then opened their polls in the same room and at the same desk at which the opposition inspectors were still sitting. Mr. Shearman immediately stepped in front of them and began, on various grounds, to challenge every vote. Of course his challenge was disregarded, but the process was kept up by himself or others, until, towards one o'clock, both polls were declared closed. Neither party attempted to vote at the polls of the other, nor was there any disorder or disturbance. The two boards then canvassed their votes; the Erie board declared that the ticket voted for at their polls had received 13,400 votes, and was elected. Shortly afterwards the Ramsey board declared that the ticket voted for at their poll had

of the (Erie. road, I should say that I have never been able to find where these fraudulent acts charged were committed. I have never been able to find where the villany comes in. I have been looking for it very anxiously. I have thought that the newspapers were edited by men so much wiser than myself that they must know all about it, and I confess that when I entered upon the service of the company, amid a perfect clamor on the part of the newspapers, I thought they were edited by such wise men that there must be something wrong, and I entered upon my duties with fear and trembling, but I found no occasion for fear and trembling."

*Mr. Littlejohn.* You are speaking as a lawyer now?

*Mr. Shearman.* No, sir, — as a man; and now as a lawyer I say that I think it is no slight tribute to the character of the gentlemen who are in the management of the Erie Company, that, knowing as they did how particular I was in regard to the management of its officers, how careful I was that no injustice should be done to the company, and how strongly determined I was that its interests should not suffer, they confided their affairs in my hands. And they have confided also in a gentleman of superior age and of very high character, a gentleman with a Quixotic sense of honor, a gentleman who has never done a dishonorable action, a gentleman whom the other side would have been glad to engage for themselves if they could have done so, — Mr David Dudley Field. Mr. Field has been chosen by the Erie Railway Company as their adviser, and, trained with Mr. Field, I have learned something of his high sense of professional honor, etc.

received 10,742 votes, and was elected. The two boards of directors thus chosen then met and organized, the one by the choice of Colonel Church as president, and the other by the re-election of Mr. Ramsey; and having then sufficiently regarded each other from the opposite sides of the directors' room, in due time they adjourned.

The election was over, and apparently nothing was decided by it. Each of the boards elected claimed to be the regular and only lawful one, and neither of them in any way recognized the other. Fortunately the agents of Governor Hoffman were still in actual possession. The Erie party had, indeed, endeavored to take advantage of this fact, by including in their list of directors both Messrs. McQuade and Banks, who were then operating the road under the authority of the Governor. This move wholly failed. Both of these gentlemen instantly and peremptorily withdrew from the board when notified of their election. Governor Hoffman was the one person now responsible, and he very wisely called upon the courts to decide who was legally entitled to the possession of the road. At his direction the Attorney-General, immediately after the election, began a new suit, in which all parties litigant were included, and a general decision on the merits was prayed for. This was the only way to cut the knot. The previous litigation was in a state of hopeless chaos. Twenty-two suits had been begun, a score of injunctions had been issued, numberless orders had been made, and both parties now stood ready to continue the same style of warfare, just as long as any judge could be found who disregarded the duties of his position on the one side, or who did not lack nerve on the other.

The action brought by the Attorney-General came on for trial before Justice E. Darwin Smith, at Rochester, on the 29th of November succeeding the election. The intervening time had been wasted by neither party. Messrs. Fisk and Gould had utilized it in those manipulations of the gold market, which had resulted in the celebrated explosion of September 24, long to be famous as the "black Friday" in Wall Street

annals. Mr. Ramsey, meanwhile, had confined his attention to the quarrel already existing, and had carried the war vigorously into Africa, assailing the Erie management in its own stronghold through the suit of *Ramsey* vs. *Erie et als.* Writs, orders, injunctions, receiverships, and conflicts of jurisdiction had become matters of such daily occurrence as hardly to excite a passing notice, and the complications which had grown up around the Erie ring were only exceeded by the scandal they caused. Hitherto, strong in the protection of the more reckless of the city judges, Messrs. Gould and Fisk had suffered no material defeat; they had, indeed, in so far as the law was concerned, carried all before them; for to them the law was simply a process for annoying others, and obstructing all that was calculated to annoy them. Foiled in their attempt to get control of the Susquehanna road by force, they did, indeed, now try to get it by negotiation; they proposed a compromise of all existing disputes on the basis of a lease of this road by the Erie for a term of ninety-nine years, at a rent equal to seven per cent on its bonds and stock outstanding, with a thirty per cent stock dividend flung in as a bonus. The Susquehanna people listened to the proposal, but it finally appeared that no further guaranty than the word of the Erie managers was contemplated. The Atlantic & Great Western Railroad had already illustrated the value of that. Like Falstaff's tailor, the Susquehanna people "liked not the security"; and the other party, like the fat old knight himself, "had as lief they would put ratsbane in my mouth as offer to stop it with security." The negotiation fell wholly through, and nothing remained but the arbitrament of a country justice of the Supreme Court.

At the end of November the case was in order for trial. The Executive, the Attorney-General, the court, and the Ramsey counsel were ready and in earnest. The usual motions for delay from the other side were received with little favor. It was shown that another suit, in which Messrs. Fisk and Gould and their leading counsel were engaged, was then on trial before Judge Barnard. It was of no avail; the parties were ordered

to proceed, and the case before Judge Barnard had to be postponed. The trial lasted ten days, and a vast amount of evidence was put in. Mr. Fisk and Mr. Gould were conspicuous by their absence from the witness-stand, but their counsel were put upon it, and Messrs. Harris and Shearman each told his own story. Some features of the evidence and incidents of the trial were far from creditable. Among these may especially be mentioned an attempt to create an impression that Mr. Ramsey had once been under an indictment for forgery. So grave a charge seemed most unlikely to be made without some shadow of reason. In this case, however, it was wantonly advanced, and even the machinery through which it was manufactured was subsequently exposed. Naturally this proceeding and others reacted violently on those who had sought to derive advantage from them. Public feeling in the court-room and in the city of Rochester grew very strong as the case proceeded, showing itself in ways not to be mistaken. As the case was on the equity side of the court, there was no intervention of a jury, no chance of an inability to agree on a verdict. After the evidence was all in, and the case had been elaborately argued by Mr. David Dudley Field for the Erie party, and by Mr. Henry Smith for the Susquehanna party, Judge Smith took the papers, but reserved his decision. It was January before this was made public.

There are cases where a judge upon the bench is called upon to vindicate in no doubtful way the purity as well as the majesty of the law ; cases in which the parties before the court should be made to feel that they are not equal, that fraud is fraud even in a court of law, — that cavilling and technicalities and special pleading cannot blind the clear eye of equity. It is possible that even a judicial tone may be overdone or be out of place. There are occasions when the scales of justice become almost an encumbrance, and both hands clutch at the sword alone. Whether the magistrate upon whom the decision of this cause devolved was right in holding this to be such an occasion is not now to be discussed; it is enough to say that his decision sustained at every point the Ramsey

board, and crushed in succession all the schemes of the Erie ring. The opinion was most noticeable in that it approached the inquiry in a large spirit. Its conclusion was not made to turn on the question of a second of time, or a rigid adherence to the letter of the law, or any other technicality of the pettifogger; it swept all these aside and spoke firmly and clearly to the question of fraud and fraudulent conspiracy. All the elaborate comparison of watches, and noting of fractional parts of a minute, which marked the organization of the Erie meeting were treated with contempt, but the meeting itself was pronounced to be organized in pursuance of a previous conspiracy, and the election held by it was "irregular, fraudulent, and void." The scandals of the law — the strange processes, injunctions, orders, and conflicts of jurisdiction — were disposed of with the same grasp, whenever they came in the path of the decision. The appointment of Fuller as receiver was declared to have been made in a "suit instituted for a fraudulent purpose," and it was pronounced in such "clear conflict with the law and settled practice of the court" as to be explicable only on a supposition that the order was "granted incautiously, and upon some mistaken oral representation or statement of the facts of the case." The order removing the regular inspectors of election was "improvidently granted" and was "entirely void"; and the keeping it back by counsel, and serving it only at the moment of election, was "an obvious and designed surprise on the great body of stockholders." The suit under which the Barnard order of arrest was issued against Ramsey and Phelps was instituted without right, the order of arrest was unauthorized, the order to hold to bail "most extraordinary and exorbitant," and was procured "in aid of fraudulent purposes." The injunction forbidding Ramsey to act as president of the company was "entirely void." The three thousand shares of forfeited stock reissued to Mr. Groesbeck were pronounced "valid stock," and numerous precedents were cited in which the principle had been sustained. Even the subscription for the nine thousand five hundred new shares of stock by Ramsey and his friends, on

which they had not even attempted to vote at the election, was declared, in point of law, regular, valid, and binding. Upon the facts of the case the decision was equally outspoken; it was fraud and conspiracy everywhere. "The importation and crowding into a small room" of a large number of "rude, rough, and dangerous persons," and furnishing them with proxies that they might participate in the proceedings of the meeting, "was a gross perversion and abuse of the right to vote by proxy and a clear infringement of the rights of stockholders, tending, if such proceedings are countenanced by the courts, to convert corporation meetings into places of disorder, lawlessness, and riot." Finally, costs were decreed to the Ramsey board of directors, and a reference was made to Samuel L. Selden, late a judge of the Court of Appeals, to ascertain and report a proper extra allowance in the case, and to which of the defendants it was to be paid.

The legal scandals of the case were not yet quite exhausted. No sooner was this decision announced and telegraphed to New York, than the Erie counsel at once had recourse to the judges of that city. As a matter of course, an *ex parte* order was instantly granted, staying the entry of judgment. It reached Rochester a few hours too late; the judgment was entered. The next day a new order was obtained, staying all proceedings under the judgment; and this was served on Messrs. Banks and McQuade, who were still in possession of the road. Recourse was had to Judge Peckham, who quietly declared the stay of no effect, and granted an order putting the Ramsey board in possession. Then at last the keys were delivered to them. The Erie counsel were not yet satisfied. A motion was made to vacate the judgment. This was supported by affidavits of counsel of the most unusual nature. Imputations of unfairness, irregularity, bias, and conduct otherwise wholly unbecoming a magistrate, were advanced against Judge Smith. The four leading lawyers of the defeated party then united in a certificate, which concluded with these singular words: "We have examined the opinion of Mr. Justice Smith in this cause, and, in our judgment, it is in every ma-

terial part erroneous, either in fact or in law." It may be necessary to mention here that this was a certificate of counsel on the losing side of a decided case, applying to one judge of the Supreme Court of New York, to vacate a judgment just entered by another judge of the same court. It ought to be unnecessary to add that the assumptions on which the motion was based were pronounced "simply monstrous"; and the affidavits were ordered to be stricken from the record as "irrelevant and impertinent." Nothing now remained to the Erie faction but the slow process of appeal, with their opponents in actual possession.

The struggle was over. Long before any action could be taken on the decision of Judge Smith, at the general term of the court, the Albany & Susquehanna Railroad was beyond the reach of Fisk or Gould or the Erie Railway. Early in February, 1870, the Ramsey direction leased the whole property in perpetuity, and on very favorable terms, to the Hudson & Delaware Canal Company. This arrangement transferred the struggle from the comparatively weak shoulders of the railroad itself to those of one of the most powerful and wealthy corporations in the country. With it the Erie managers could not afford to quarrel, so they were fain to profess themselves satisfied with the result, and to desist from the contest.

Meanwhile the Hon. Samuel L. Selden was busy over his reference; and the case was wellnigh forgotten before he made his report. When it was made, it was calculated to revive a very fresh recollection of the litigation in the minds of Mr. Fisk's board of directors. This was composed of thirteen individuals, of whom Messrs. Fisk and Gould were two. The report of Mr. Selden was long and very minutely drawn; it was a document likely to be accepted by the court, and not easily overthrown on appeal. "In view of the whole history of this extraordinary case," and in consideration of the assumption by the Albany & Susquehanna Railroad Co. of the entire expenses of the litigation, the sum of ninety-two thousand dollars was fixed upon as a just and proper extra allowance to be

paid by the persons constituting the Fisk board of directors to those persons constituting the Ramsey board.*

* An appeal was taken by the Fisk board of directors from the decision of Judge Smith, referred to in the text, and reported in 7 Abbot's Pr. Rep. N. S., p. 265. The decision of the General Term was not announced until May, 1871. It turned wholly upon technical points, and in no respect entered into the merits of the controversy; upon these the findings of the court below were apparently accepted as conclusive. The decision of Judge Smith was affirmed in so far as it declared the election of the Fisk board fraudulent and void, and that of the Ramsey board valid, on the ground that this question was properly before the court, and it was competent to pass upon it. Judge Smith had also decreed that the proceedings in all the suits on either side between the parties defendant should be stayed and discontinued. This relief, it was held, upon technical grounds, the court below was not competent to grant, and upon this point the decision was reversed. It was also reversed upon the question of costs, upon the ground that in an action brought by the People against two sets of defendants the court had no power to grant costs to one set against the other.

The Ramsey party was, therefore, sustained in the possession of the property; but the Fisk party escaped the payment of costs under the Selden reference. So far as the scandals in litigation were concerned, which gave so great a notoriety to this case between the preparation and publication of this paper, the court at General Term confined itself to a simple closing reference to them. Profound regret was expressed at the occurrences which had preceded the action then before the court, which in itself, however, it was declared had been marked by no unbecoming conduct on the part of counsel.

# CAPTAINE JOHN SMITH,*

SOMETIME GOVERNOUR IN VIRGINIA AND ADMIRALL OF NEW ENGLAND.

*A Discourse of Virginia.* By EDWARD MARIA WINGFIELD, the First President of the Colony. Edited by CHARLES DEANE, Member of the American Antiquarian Society, and of the Massachusetts Historical Society. Boston: Privately printed. 1860.

*A True Relation of Virginia.* By CAPTAIN JOHN SMITH. With an Introduction and Notes, by CHARLES DEANE. Boston. 1866.

THE ordinary reader will see in the small book lately published by Mr. Deane a simple reprint of a black-letter pamphlet which is one of the most precious jewels of American bibliopoles. There is not a word in the title-page to suggest that the Introduction and notes, which are the work of the editor, serve any other purpose than to explain and illustrate the text. The volume is in appearance as innocent and free from heretical taint as the reprint of the New England Primer. Yet any one familiar with the course of Mr. Deane's previous inquiries knows quite well, in taking up the book, that he is about to find very original views in regard to some extremely interesting questions of colonial history; and if Mr. Deane has chosen to adopt this modest form of publication, it is by no means because what he has to say would not warrant an original and independent work bearing his own name alone on the title-page. If the opinions advanced by Mr. Deane, which it will be our aim to explain, are correct, a very serious

* From the North American Review for January, 1867.

change in received ideas concerning the early history of Virginia will be necessary, and one to which the American people will find it difficult to reconcile themselves.

Stated in its widest bearings, the question raised in this publication is upon the veracity of Captain John Smith; and since the account of the colonization of Virginia has hitherto been almost exclusively drawn from Smith's Generall Historie, it is evident that, if the authority of that work is overthrown, it will become necessary to reconsider, not merely the statements of fact which rest only on its assertions, but the whole series of opinions which through it have been grafted upon history. These statements and opinions have been received with unhesitating confidence for more than two hundred years. There are powerful social interests, to say nothing of popular prejudices, greatly concerned in maintaining the credit of Smith's narrative even at the present day. No object whatever can be gained by discrediting it, except the establishment of bald historical truth. A very strong case indeed must therefore be made out on the part of Mr. Deane and of those who follow him, before the American public can be induced to listen with attention to an argument which aims at nothing less than the entire erasure of one of the most attractive portions of American history.

Captain John Smith belonged to the extraordinary school of adventurers who gave so much lustre to the reign of Elizabeth, and whose most brilliant leader it was one of King James's exploits to bring to the Tower and the block. Like Raleigh, though on a much lower level, Smith sustained many different characters; he was a soldier or a sailor indifferently, a statesman when circumstances gave him power, and an author when occasion required. He was born in Lincolnshire in 1579, of what is supposed to have been a good Lancashire family. At a very early age he became a soldier of fortune in the Low Countries, and seems to have drifted into the Austrian service, where he took part in the campaign of 1600 against the Turks. Afterwards he reappears as a soldier of the Prince of Transylvania, who gave him a coat of arms, which was

registered at the Herald's College in London. The extraordinary adventures which he met with during the three or four years of his life in Eastern Europe are related in his Autobiography, or "True Travels," a work published in London in 1630, near the close of his life. There is an interesting note in Dr. Palfrey's History of New England (Vol. I. pp. 89 – 92) which contains the earliest critical examination of this portion of Smith's story from an historical and geographical point of view, with a result not on the whole unfavorable to Smith, although under reservations which admit a considerable degree of doubt as to particulars. In the absence of other authorities, however, the credit of the Autobiography must be left to stand or fall with that of the Generall Historie.

In 1604 Smith was again in England, where he soon began to interest himself in the enterprise of colonizing America.

On the 10th of April, 1606, King James conferred a charter upon certain persons in England, who took the title of the Virginia Company, and who proceeded to fit out an expedition of three small vessels, containing, in addition to their crews, one hundred and five colonists, headed by a Council, of which Edward Maria Wingfield was chosen President, and Captains Bartholomew Gosnold, John Smith, John Ratcliffe, John Martin, and George Kendall were the other members. After various delays this expedition dropped down the Thames on the 20th of December of the same year, but was still kept six weeks in sight of England by unfavorable winds. After a long and difficult voyage, and a further delay of three weeks among the West India Islands, the headlands of Chesapeake Bay were passed on the 26th of April, 1607. On the 14th of May following, the colonists formally founded Jamestown.

But in the mean while a difficulty, the true causes of which are not well understood, had created trouble between Smith and his colleagues. Smith's own story is told in the Generall Historie as follows: "Now Captain Smith, who all this time from their departure from the Canaries was restrained as a prisoner upon the scandalous suggestions of some of the chiefe (envying his repute) who fained he intended to usurpe the

Government, murther the Councell, and make himselfe King, that his confederats were dispersed in all the three ships, and that divers of his confederats that revealed it would affirm it, for this he was committed as a prisoner: thirteen weeks he remained thus suspected, and by that time the ships should returne, they pretended out of their commisserations to refer him to the Councell in England to receive a check, rather then by particulating his designes make him so odious to the world, as to touch his life, or utterly overthrow his reputation."

The truth was, that Captain Newport, who was about to return to England, exerted his influence so strongly in favor of harmony, that Smith was allowed to resume his seat among the Council. But we are left entirely in ignorance of the real motives of Smith's colleagues, and the evidence, if any, on which they acted. One fact, however, is quite clear; Smith was not liked by the persons in control of the expedition, and it is possible that some little light on the causes of this dislike or suspicion may be found in a passage of Wingfield's "Discourse," a work which we shall hereafter have occasion to mention at greater length. Wingfield, who was one of Smith's opponents, says that "it was proved to his face that he begged in Ireland, like a rogue without a lycence." And he adds, "To such I would not my name should be a companyon." One may imagine that, if Smith were really accused of conspiring to obtain power, the dark events and questionable expedients of his varied and troubled career might well be flung in his face, and produce a considerable influence on the minds of his judges.

Harmony, however, was a blessing which was little known among the unhappy colonists, and it is worth noticing that, before the close of the year, Captain George Kendall, another of the members of the Council, was accused of the same crime with which Smith had been charged, and was tried, convicted, and actually executed. Newport, who seems to have had great influence over the colonists, returned to England on the 22d of June, leaving three months' supplies behind him, and promising to return in seven months with a new company of set-

tlers. His departure was followed by a series of disasters and troubles of every description. The mortality was frightful. More than forty deaths took place before September, some of which were caused by fevers and sickness, some by the Indians, but the larger number by mere famine. The kindness of the Indians alone, if we may believe the express statement of Percy, who was among the survivors, preserved the remaining colonists from the fate of the lost Roanoke settlement of 1585.

Even this terrible condition of the colony, though during five months together there were not five able-bodied men to mount the defences, had no effect in quieting the jealousies and dissensions of the leaders. Captain Gosnold died, leaving only Wingfield, Ratcliffe, Smith, and Martin in the Council. The last three combined to depose Wingfield; and this revolution took place on the 10th of September, without resistance. Ratcliffe, as the next in order, was chosen President, although there is strong reason to believe that Wingfield was the better man.

It became absolutely necessary to obtain supplies in order to preserve the lives of the few remaining colonists. "As at this time," says Smith, "were most of our chiefest men either sicke or discontented, the rest being in such despaire as they would rather starve and rot with idlenes, then be persuaded to do anything for their owne reliefe without constraint: our victualles being now within eighteene dayes spent, and the Indians trade decreasing, I was sent to the mouth of y^e^ river to trade for Corne, and try the River for Fish, but our fishing we could not effect by reason of the stormy weather." Fortunately the Indians were found willing to trade for corn, and by means of their supplies the lives of the settlers were saved. On the 9th of November, Smith made a longer excursion, partially exploring the Chickahominy, and was received with much kindness by the Indians, who supplied him with corn enough to have "laded a ship." Elated by his success and encouraged by the friendly attitude of the savages, or, according to his own account, eager "to discharge the imputation

of malicious tungs, that halfe suspected I durst not, for so long delaying," he determined to carry on his exploration of the Chickahominy to its source. On the 10th of December he set out in the pinnace, which he left at a place he calls Apocant, forty miles from the mouth of the Chickahominy, and continued his journey in a barge. Finally, rather than endanger the barge, he hired a canoe and two Indians to row it, and with two of his own company, named Robinson and Emry, he went twenty miles higher. "Though some wise men may condemn this too bould attempt of too much indiscretion, yet if they well consider the friendship of the Indians, in conducting me, the desolatenes of the country, the probability of [discovering] some lake, and the malicious judges of my actions at home, as also to have some matters of worth to incourage our adventurers in England, might well have caused any honest minde to have done the like, as wel for his own discharge, as for the publike good."

At length they landed to prepare their dinner, and Smith with one Indian walked on along the course of the river, while Robinson and Emry with the other Indian remained to guard the canoe. Within a quarter of an hour he heard a hallooing of Indians and a loud cry, and, fearing treachery, he seized his guide, whose arm he bound fast to his own hand, while he prepared his pistol for immediate use. As they "went discoursing," an arrow struck him on the right thigh, but without harm. He soon found himself attacked by some two hundred savages, against whose arrows he used his guide as a shield, discharging his pistol three or four times. The Indian chief, Opechankanough, then called upon him to surrender, and the savages laid their bows on the ground, ceasing to shoot. "My hinde treated betwixt them and me of conditions of peace, he discovered me to be the Captaine, my request was to retire to y^e^ boate; they demanded my armes, the rest they saide were slaine, only me they would reserve: the Indian importuned me not to shoot. In retiring being in the midst of a low quagmire, and minding them more than my steps, I stept fast into the quagmire, and also the Indian in drawing me forth:

thus surprised, I resolved to trie their mercies, my armes I caste from me, till which none durst approch me: being ceazed on me they drew me out and led me to the King."

Thus far, to avoid confusion, we have followed the account given in the True Relation, written by Smith, and published in London in 1608, the year following the events described. But in 1624 Smith published in London his Generall Historie, which contains a version of the story varying essentially from that of the True Relation. In continuing, therefore, the account of his captivity, the two narratives will be placed side by side, for convenience of comparison, and the principal variations will be printed in Italics. After describing the circumstances of his capture, which took place far up on the Chickahominy River, Smith proceeds in his double narrative as follows: —

A TRUE RELATION.

1608.

"They drew me out and led me to the King, I presented him with a compasse diall . . . . with kinde speeches and bread he requited me, conducting me where the Canow lay and John Robinson slaine, with 20 or 30 arrowes in him. Emry I saw not, I perceived by the aboundance of fires all over the woods, *at each place I expected when they would execute me, yet they used me with what kindnes they could:* approaching their Towne, which was within 6 miles where I was taken . . . . the Captaine conducting me to his lodging, a quarter of venison and some ten pound of bread I had for supper, what I left was reserved for me, and sent with me to my lodging: each morning 3 women presented me three great platters of fine bread, *more venison than ten men*

THE GENERALL HISTORIE.

1624.

"Then according to their composition they drew him forth and led him to the fire where his men were slaine. Diligently they chafed his benummed limbs. He demanding for their Captaine they showed him Opechankanough king of Pamaunkee, to whom he gave a round ivory double compass Dyall. Much they marvailed at the playing of the Fly and Needle. . . . . *Notwithstanding, within an houre after they tied him to a tree and as many as could stand about him prepared to shoot him,* but the King holding up the Compass in his hand, they all laid down their bowes and arrowes and in a triumphant manner led him to Orapaks where he was after their manner kindly feasted and well used. . . . . Smith they conducted to a long house where *thirtie or fortie tall fel-*

*could devour I had,* my gowne, points and garters, my compas and a tablet they gave me again, though 8 ordinarily guarded me, I wanted not what they could devise to content me: and still our longer acquaintance increased our better affection. . . . . I desired he [the King] would send a messenger to Paspahegh [Jamestown] with a letter I would write, by which they shold understand, how kindly they used me, and that I was well, least they should revenge my death: this he granted and sent three men, in such weather as in reason were unpossible, by any naked to be endured. . . . . The next day after my letter came a salvage to my lodging with his sword to have slaine me. . . . . this was the father of him I had slayne, whose fury to prevent, the King presently conducted me to another Kingdome, upon the top of the next northerly river, called Youghtanan, having feasted me, he further led me to another branch of the river called Mattapament, to two other hunting townes they led me, and to each of these countries a house of the great Emperor of Pewhakan, whom as yet I supposed to bee at the Fals, *to him I told him I must goe, and so returne to Paspahegh,* after this foure or five dayes march, we returned to Rasawrack, the first towne they brought me too, where binding the Mats in bundles, they marched two dayes journey and crossed the river of Youghtanan where it was as broad as Thames; so conducting me to a place called Menapacute in Pamaunke, where y^e^ King inhabited. . . . .

"From hence this kind King *lowes did guard him,* and ere long *more bread and venison was brought him than would have served twentie men.* I think his stomach at that time was not very good; what he left they put in baskets and tyed over his head. About midnight they set the meat again before him, all this time not one of them would eat a bit with him, till the next morning they brought him as much more, and then did they eate all the olde, and reserved the newe as they had done the other, which made him think they would fat him to eate him. Yet in this desperate estate to defend him from the cold, one Maocassater brought him his gowne in requitall of some beads and toyes Smith had given him at his first arrival in Virginia.

"Two dayes after a man would have slaine him (but that the guard prevented it) for the death of his sonne to whom they conducted him to recover the poore man then breathing his last. . . . . In part of a Table booke he writ his minde to them at the Fort, and . . . . the messengers . . . . according to his request went to Jamestowne in as bitter weather as could be of frost and snow, and within three dayes returned with an answer.

"Then they led him to the Youthtanunds, the Mattaponients, the Payankatanks, the Nantaughtacunds, and Omawmanients upon the rivers of Rapahannock and *Patawomeck, over all those rivers* and back againe by divers other severall nations to the King's habitation at Pamaunkee where they entertained him with most strange and fearfull Conjurations. . . . .

conducted mee to a place called Topahanocke, a kingdome upon another River northward : the cause of this was, that the yeare before, a shippe had beene in the River of Pamaunke, who having been kindly entertained by Powhatan their Emperour, they returned thence, and discovered the River of Topahanocke, where being received with like kindnesse, yet he slue the King and tooke of his people, and they supposed I were hee, but the people reported him a great man that was Captaine, and using mee kindly, the next day we departed. . . . .

"The next night I lodged at a hunting town of Powhatams, and the next day arrived at Waranacomoco upon the river of Pamauncke, where the great king is resident. . . . .

"Arriving at Weramocomoco their Emperour . . . . kindly welcomed me with good wordes, and great Platters of sundrie Victuals, *assuring mee his friendship, and my libertie within foure dayes.* . . . . hee desired mee to forsake Paspahegh, and to live with him upon his River, a Countrie called Capa Howasicke : hee promised to give me Corne, Venison, or what I wanted to feede us, Hatchets and Copper wee should make him, and none should disturbe us. This request I promised to performe : and thus having with all the kindnes hee could devise, sought to content me : hee sent me home *with* 4 *men*, one that usually carried my Gowne and Knapsacke after me, two other loded with bread, and one to accompanie me. . . . .

"From Weramocomoco is but 12

"At last they brought him to Meronocomoco where was Powhatan their Emperor. Here more than two hundred of those grim Courtiers stood wondering at him, as he had been a monster ; till Powhatan and his trayne had put themselves in their greatest braveries. . . . . At his entrance before the King, all the people gave a great shout. The Queene of Appamatuck was appointed to bring him water to wash his hands, and another brought him a bunch of feathers, in stead of a Towell to dry them : *having feasted him after their best barbarous manner they could, a long consultation was held, but the conclusion was, two great stones were brought before Powhatan : then as many as could layd hands on him, dragged him to them, and thereon laid his head, and being ready with their clubs, to beate out his braines, Pocahontas the Kings dearest daughter, when no intreaty could prevaile, got his head in her armes, and laid her owne upon his to save him from death : whereat the Emperour was contented he should live to make him hatchets, and her bells, beads and copper.* . . . .

"Two dayes after, Powhatan having disguised himselfe in the most fearfullest manner he could . . . . more like a devil than a man with some two hundred more as blacke as himselfe, came unto him and told him now they were friends, and presently he should goe to Jamestowne, to send him two great gunnes and a gryndstone, for which he would give him the Country of Capahowosick, and for ever esteeme him as his sonne Nantaquoud. So to Jamestowne *with* 12 *guides* Powhatan sent him, *he still expecting* (*as*

miles, yet the Indians trifled away that day, and would not goe to our Forte by any perswasions : but in certaine olde hunting houses of Paspahegh we lodged all night. The next morning ere Sunne rise, we set forward for our Fort, where we arrived within an houre, where each man with truest signes of joy they could expresse welcomed mee, except M. Archer, and some 2 or 3 of his, who was then in my absence, sworne Counsellour, though not with the consent of Captaine Martin : great blame and imputation was laide upon mee by them, for the losse of our two men which the Indians slew : insomuch that they purposed to depose me, but *in the midst of my miseries, it pleased God to send Captaine Nuport, who arriving there the same night, so tripled our joy, as for a while these plots against me were deferred* though with much malice against me, which captain Newport in short time did plainly see."

*he had done all this long time of his imprisonment) every houre to be put to one death or other : for all their feasting.* But almightie God (by his divine providence) had mollified the hearts of those sterne Barbarians with compassion. The next morning betimes they came to the Fort. . . . .

"*Now in Jamestowne they were all in combustion the strongest preparing once more to run away with the Pinnace ; which with the hazzard of his life, with Sabre falcon and musket shot, Smith forced now the third time to stay or sinke.* Some no better than they should be, had plotted with the President, the next day to have put him to death by the Leviticall law, for the lives of Robinson and Emry, pretending the fault was his that had led them to their ends : but *he quickly tooke such order with such lawyers, that he layd them by the heeles till he sent some of them prisoners for England.* . . . .

"Newport got in and arrived at James Towne not long after the redemption of Captaine Smith. . . . .

"Written by Thomas Studley, the first Cape Merchant in Virginia, Robert Fenton, Edward Harrington, and J. S."

The instant result of comparing the two narratives thus for the first time placed side by side, is to bring into sharp prominence a certain curious tone of exaggeration which characterizes the later story. Eight guards, which had been sufficient in 1608, are multiplied into thirty or forty tall fellows in 1624. What was enough for ten men at the earlier time would feed twenty according to the later version. Four guides were surely an ample escort to conduct Smith to Jamestown, but

they are reinforced to the number of twelve sixteen years afterwards. With the best disposition towards Smith, one cannot but remember that this was just the period when Falstaff and his misbegotten knaves in Kendal Green appeared upon the stage. The execution wrought upon the wretched lawyers who wished to try Smith for his life on his return to Jamestown is most prompt and decisive, according to the story of 1624, but in 1608 Smith is happy to accept the aid of Captain Newport to disembarrass him of his too-powerful enemies. With sabre, falcon, and musket-shot he forced the mutinous crew of the pinnace to stay or sink, if we are to believe the Generall Historie, while the True Relation is quite silent as to any such feat of arms, but simply observes that Captain Newport arrived the same evening.

The same character of exaggeration marks the whole account of the treatment he received among the savages. According to the story written a few months after the event, a people is described, savage it is true, but neither cruel nor bloodthirsty; reckless, perhaps, of life in battle, but kind and even magnanimous towards their captive. Here is an express statement that no such demonstration was made against Smith as is affirmed in 1624, to have taken place within an hour after his capture. Only a few days after he was taken prisoner, he represents himself as giving orders to Opechankanough to take him to Powhatan, and even at this time he knew that he was to be allowed to return to Jamestown. "To him I told him I must go, and so return to Paspahegh." Powhatan received him with the greatest cordiality, and, having sought to content him with all the kindness he could devise, did actually send him with a guard of honor back to his friends. If the True Relation is really true, the behavior of these naked barbarians towards Smith was far more humane than that which he would have received at the hands of any civilized nation on the face of the earth. There is not a trace of his having felt any immediate fear for his life, except from a savage whose son he had killed, and from whom Opechankanough protected him. One line indeed occurs to

the effect that they fed him so fat as to make him much doubt they meant to sacrifice him; and this paragraph furnishes the most striking evidence of the kindness of the Indians, and of the fact that he believed himself to have been mistaken in having entertained the suspicion. Yet in 1624 we learn that throughout his long imprisonment he was still expecting every hour to be put to one death or another.

These variations would be of little consequence to the ordinary reader of the colonial history, if they stopped at trifling inconsistencies. They would merely prove, what is almost self-evident, that the earlier narrative is the safer authority for historians to follow, and that the confidence which has hitherto been felt in the exactness of the Generall Historie cannot be altogether maintained. But there is one particular point in the text where every American who has heretofore enjoyed the most favorite story in the early annals of his country will stop with a feeling of wonder and a desire to doubt the evidence of his eyes. When he comes to the paragraph in which the Generall Historie relates the touching story of Pocahontas, and her intercession at the moment of Smith's extremest peril, and when he turns to the opposite column of the True Relation to find its version of the incident, he will surely be amazed to see not only that it fails to furnish the remotest allusion to this act, or even by a single word to indicate that Pocahontas so much as existed, but that it expressly asserts the remarkable kindness with which Powhatan treated his captive and assured him at once of his early liberation.

No American needs to learn that this tale of Pocahontas is probably the most romantic episode in the whole history of his country. Her name and story are familiar to every schoolboy, and there are even families whose greatest pride is to trace their descent from the Emperor's daughter that saved the life of Captain John Smith. Perhaps this feeling is based on admiration of the heroism and rare qualities of the Indian child, though her character as a princess of blood royal may offer a certain attraction to some of her descendants even in our own day. In the general enthusiasm, language, and per-

haps common sense, have been a little strained to describe her attributes. Her beauty and wild grace, her compassion and disinterestedness, her Christian life and pure character, have been dwelt upon with warm affection, which is the more natural as the childhood of the nation has furnished little latitude to the imagination. One after another, all American historians have contented themselves with repeating the words of the Generall Historie, vying with each other in heaping praises which no critics were cynical enough to gainsay, now on the virtues of Pocahontas, and now on the courage and constancy of Smith.

The unquestioning faith with which this narrative has been hitherto received is well shown by a quotation from the work which ranks as the standard authority for American history. In the early editions of Mr. Bancroft's "History of the United States," we read the following version of Smith's adventure: —

"The gentle feelings of humanity are the same in every race, and in every period of life; they bloom, though unconsciously, even in the bosom of a child. Smith had easily won the confiding fondness of the Indian maiden; and now, the impulse of mercy awakened within her breast, she clung firmly to his neck, as his head was bowed to receive the strokes of the tomahawk. Did the childlike superstition of her kindred reverence her interference as a token from a superior power? Her fearlessness and her entreaties persuaded the council to spare the agreeable stranger, who might make hatchets for her father, and rattles and strings of beads for herself, the favorite child. The barbarians, whose decision had long been held in suspense by the mysterious awe which Smith had inspired, now resolved to receive him as a friend, and to make him a partner of their councils. They tempted him to join their bands, and lend assistance in an attack upon the white men at Jamestown; and when his decision of character succeeded in changing the current of their thoughts, they dismissed him with mutual promises of friendship and benevolence."

In a note appended to these paragraphs the author quotes: —

"Smith, I. 158 – 162, and II. 29 – 33. The account is fully con-

tained in the oldest book printed on Virginia, in our Cambridge library. It is a thin quarto, in black-letter, by John Smith, printed in 1608, — A True Relation, &c."

One sees at a glance that the story, in passing through the medium of Mr. Bancroft's mind, has gained something which did not belong to the original, or belonged to it only in a modified degree. The spirit of Smith has infused itself into the modern historian, as it had already infused itself into the works of his predecessors. The lights are intensified; the shadows deepened; the gradations softened; the copy surpasses its model. This tendency is carried so far that the author quotes the True Relation as the full authority for what is only to be found in the Generall Historie, if indeed it is all to be found even there. When Mr. Bancroft made the careful collation of his own version of the story with the black-letter pamphlet in the Cambridge library, the brilliant popular reputation of Smith had already created an illusion in his mind resembling the optical effect of refracted light. He saw something which did not exist, the exaggerated image of a figure beyond.

No one, however, has now a right to triumph over the error. The time has gone by when the mistake contained in this note could be made use of to point any attack upon the merits of Mr. Bancroft's work, or upon the soundness of his study; he has himself corrected his own blunder, and in his last editions, since 1860, another note has been substituted in the place of the one already quoted. It stands at present as follows: —

"The rescue of Smith by Pocahontas was told with authority in 1617, in Smith's 'Relation to Queen Anne'; Historie, 127. It is confirmed in his New England's Trials, printed in 1622; and the full narrative is to be found in the Historie, printed in 1624. In 1625, Purchas, who had many manuscripts on Virginia, gives the narrative a place in his Pilgrims, as unquestionably authentic. Compare Deane's note on Wingfield, 31, 32."

From a critical point of view, this statement of the case may be open to objection as well as the other. If it is to

be understood as a defence of Smith, strict critical justice would require that the existence of some accusation should be mentioned, its nature noticed, and its authority given. If it is not intended as a defence, but merely indicates a doubt in the author's own mind, which he wishes to place with its corrective before his readers, without laying too much stress upon it, exact accuracy demands a softening in the assertion of facts. It is unfortunate, too, that, as the note now stands, the ordinary reader, who is not directed to the Archæologia Americana, may be led to suppose that Mr. Deane, whose edition of Wingfield seems to have caused the alteration, is referred to in support of Smith and of Mr. Bancroft. But it is no part of our purpose to dwell upon these small and of course accidental mistakes, which would not have been worth mentioning except to illustrate the tyrannical sway still exercised by Smith over the intelligence of the country.

The quiet investigations of Mr. Deane have, however, now made it necessary for historians to meet this difficulty. They must either rely upon the testimony of Smith concerning matters of his own personal experience, and upon the prescription of two centuries in favor of his story, or, rejecting the authority hitherto considered unquestionable, they must undertake the reconstruction of this whole history out of original material hitherto considered as merely auxiliary to Smith's narrative. Unfortunately, there is no possibility of compromise in the dispute. Cautious as the expressions of Mr. Deane are, and unwilling as he evidently is to treat the reputation of Smith with harshness, it is still perfectly clear that the statements of the Generall Historie, if proved to be untrue, are falsehoods of a rare effrontery.

The argument against the Generall Historie does not rest, however, upon the text of the True Relation alone. Properly speaking, this is only the cause of a discussion which has rapidly spread itself over the whole field of contemporaneous history. Even Mr. Deane's publications do not yet quite cover all the disputed ground, and probably future students will be able to throw fresh light upon the question from sources now unknown.

The original Virginia Colony was so incongruous in composition, its sufferings were so severe, and its disasters so frequent, that in the course of a very few years several entirely different classes of men came upon the scene, and each to some extent effaced the memory of its predecessor. Of these, many leaders besides Smith have left records of more or less interest, though the most important of all, the papers of the Company itself, are mostly lost. It is even a considerable undertaking to go through the mass of these documents, and to cull out the isolated passages which bear upon the point now in dispute; but here we have fortunately the assistance of Mr. Deane's notes, which leave little to be desired.

It has already been mentioned that the first President of the Colony was Edward Maria Wingfield, who, in September, 1607, was deprived of his office and placed in confinement by Smith, and the other members of the Council. When Newport — who, with a new company of settlers, arrived at Jamestown on the 8th of January, 1608, immediately after Smith's release — set out on his second return voyage to London, he took the deposed President Wingfield with him, and they arrived safely at Blackwall on the 21st of May. Wingfield appears to have kept a sort of a diary during his stay in Virginia, and after his return he wrote with its assistance a defence of himself and his administration, which seems to have been privately circulated in manuscript, and at a later period used by Purchas, but afterwards was forgotten and hidden in the dust of the Lambeth Library. From this obscurity it was at length drawn by Mr. Deane, who published a copy of it with notes in the fourth volume of the Archæologia Americana in 1860. Excepting a few papers of little consequence, this is the earliest known writing which comes directly from the Colony. The manuscript of Smith's True Relation, which is its only possible rival, could not have reached England before the month of July, while the Discourse appears to have been intended for immediate circulation in May or June. Wingfield's work, which is called "A Discourse of Virginia," is therefore a new authority on the early history of the Colony, and has peculiar value as

a means of testing the correctness of the True Relation, and as furnishing some idea of what was thought and said by the party jealous of Smith's influence. Its account of Smith's captivity could only have been gained from his own mouth, or from those to whom he told the story, and the more accurate it is, the closer it should coincide with the True Relation.

There are a number of passages in this short pamphlet which would be well worth extracting; but the question as to Smith's veracity had for the present best be narrowed to the evidence in regard to Pocahontas, and we will only quote the passage from Wingfield which tells of Smith's adventures among the Indians.

"Dec. The 10th of December, Mr. Smith went up the ryver of the Chechohomynies to trade for corne. He was desirous to see the heade of that river; and when it was not passible with the shallop, he hired a cannow and an Indian to carry him up further. The river the higher grew worse and worse. Then he went on shoare with his guide and left Robinson and Emmery, twoe of our men in the cannow; which were presently slaine by the Indians, Pamaonke's men, and he himself taken prysoner; and by the means of his guide his lief was saved; and Pamaoncheé haveing him prisoner, carryed him to his neybors wyroances to see if any of them knewe him for one of those which had bene, some two or three yeres before us, in a river amongst them Northward, and taken awaie some Indians from them by force. At last he brought him to the great Powaton (of whome before wee had no knowledg) who sent him home to our towne the viii$^{th}$ of January. . . . .

"Mr. Archer sought how to call Mr. Smith's lief in question and had indited him upon a chapter in Leviticus for the death of his twoe men. He had had his tryall the same daie of his retorne, and I believe his hanging the same or the next daie, so speedie is our law there. But it pleased God to send Captn. Newport unto us the same evening to our unspeakable comfort, whose arrivall saved Mr. Smyth's life and mine."

Mr. Deane, in editing this work of Wingfield's, in 1860, furnished a note upon this passage, in which for the first time, so far as we are aware, a doubt was thrown upon the story of Pocahontas's intervention. Yet the discovery of Wingfield's narrative adds little to the evidence contained in the True

Relation, which has always been a well-known work. From the Discourse we learn few new facts. It supplies precise dates, fixing Smith's departure on the 10th of December, and his return on the 8th of January, so that we now know that his absence was exactly four weeks in length. It says that Smith's guide saved his life, which may or may not be a variation from the story of the True Relation. It states rather more strongly the danger Smith ran from the enmity of Archer, which may perhaps have been only the result of Wingfield's own dislike of that person. But, in general, this new piece of evidence, though clearly independent of the True Relation, confirms it in all essential points, and especially in the entire omission of any reference to Pocahontas. It is highly improbable that so remarkable an incident as her protection of Smith, if known to Wingfield, should not have been mentioned in this narrative, which, it may fairly be assumed, contained the current version of Smith's adventures, as told among the colonists after his return to Jamestown.

These two works are the only actually contemporaneous authority for the events of the first year of the colonial history. There is a wide gap between them and the next work from which we can quote; and indeed the strength of Mr. Deane's case rests so largely on the negative evidence offered by the True Relation and the Discourse, that for his purpose it was scarcely necessary to go further. Every one, whether believing or disbelieving the Generall Historie, must agree that Pocahontas was not mentioned, either by name or by implication, in the account given of Smith's captivity, either in the True Relation or in Wingfield's Discourse. If the matter in dispute were of little consequence, the inquiry might stop here, and each reader might be left to form his own opinion as to the truth, or the relative value as authority, of the conflicting narratives. But the interest of the question requires an exhaustive statement. We shall therefore return to the history of Smith and of the Colony, which has been interrupted for the purpose of explaining the difficulty which the publications of Mr. Deane have raised.

Newport returned to England on the 10th of April, 1608, carrying Wingfield with him, and leaving Ratcliffe President of the Colony, with Martin, Smith, and Archer in the Council, together with a new member, Matthew Scrivener, who had arrived with Newport. Smith in June explored successfully a part of Chesapeake Bay, and, returning on the 21st of July, found, according to the Generall Historie, the colonists in a miserable condition, unable to do anything but complain of Ratcliffe, whose principal offence appears to have been his obliging the colonists to build him "an unnecessary building for his pleasure in the woods." Ratcliffe, whose real name was Sicklemore, appears to have been really a poor creature, if the evidence in regard to him can be believed. He was now deposed, and Scrivener, Smith's "deare friend," though then exceedingly ill, succeeded him as President. This revolution was rapidly effected; for three days later, on the 24th of July, Smith again set out, with twelve men, to finish his explorations, and made a complete tour round the bay, which supplied his materials for the map published at Oxford in 1612. He did not return to Jamestown till the 7th of September, and on the 10th assumed the Presidency, "by the Election of the Councell, and request of the Company." Scrivener appears merely to have held the office during Smith's pleasure, and voluntarily resigned it into his hands.

The history of Smith's administration of the Colony from the 10th of September, 1608, till the end of September, 1609, is given in the Generall Historie, and may be studied with great advantage as an example of Smith's style. It abounds in praise of the President, combined with vigorous attacks upon every one else, from the authorities in England down to the laborers at Jamestown. We will not even try to draw a line between truth and fiction in this part of his story. Whatever may have been the merits of his government, it is certain that he had no better success than his predecessors, and that he not only failed to command obedience, but that he was left almost or quite without a friend. He was ultimately deposed and sent to England under articles of complaint. The precise tenor

of these articles is unknown; but the indefatigable Mr. Deane has unearthed in the Colonial Office a letter of Ratcliffe, alias Sicklemore, dated 4th October, 1609, in which he announces to the Lord Treasurer that "this man [Smith] is sent home to answere some misdemeanors whereof I perswade me he can scarcely clear himselfe from great imputation of blame." Beyond a doubt, the difficulties of the situation were very great, and the men Smith had to control were originally poor material, and were made desperate by their trials; but it is equally certain that his career in Virginia terminated disastrously, both for himself and for the settlement. The Virginia Company, notwithstanding his applications, never consented to employ him again.

The Colony went on from bad to worse. George Percy, a brother of the Earl of Northumberland, succeeded Smith in the Presidency. The condition of the colonists between Smith's departure in October, 1609, and the arrival of Sir Thomas Gates, in May, 1610, was terrible. Percy "was so sicke hee could neither goe nor stand." Ratcliffe, with a number of others, was killed by Indians. The remainder fed on roots, acorns, fish, and actually on the savages whom they killed, and on each other, one man murdering his wife and eating her. Out of the whole number, said to have been five hundred, not more than sixty were living when Gates arrived; and that the situation was beyond hope is proved by the fact that Gates immediately took them on board ship, and, abandoning Jamestown, set sail for England. It was only an accident that they fell in with a new expedition under Lord Delaware at the mouth of the river, who brought with him a year's provisions, and restored the fortunes of the settlement. In spite of the discouragement produced in England by the news of these disasters, the Company renewed its efforts, and again sent out Sir Thomas Gates with six vessels and three hundred men, who arrived in August, 1611. The government was now in the hands of Sir Thomas Dale, who had assumed it in May, 1611, and retained it till 1616. If the ultimate success of the Colony was due to any single man, the merit

appears to belong to Dale; for his severe and despotic rule crushed the insubordination that had been the curse of the state, compelled the idle to work, and maintained order between the colonists and the Indians. But whatever were the merits or the faults of the government subsequent to the abandonment of Jamestown and the practical destruction of the first colony in May, 1610, it is indisputable that previous to that time nothing could have been worse than the management of the settlement; and it is evident that the horrors of the winter of 1609–10 must have had their causes in the misfortunes, or the mistakes, or the incompetency of Wingfield, Ratcliffe, and Smith. That the colonists, after so long a trial, were still dependent for their bread on the Indians and on supplies from England, could scarcely have been the fault of any but themselves, and could not be excused by throwing the blame of their improvidence upon the distant board of directors in London.

In the mean while Smith, who had taken his final leave of the Colony, appears to have led a quiet life in London during several years. But he was not a man to be crushed by any disaster. The point in Smith's character which really commands admiration, although it habitually caused him to neglect his nearer duties, is the spirit of adventure which nothing could quench, and the energy in action which often overtasked his resources and caused his disasters. Although we lose sight of him during the years 1610 and 1611, we again find him in 1612 busied in the same direction as before. In this year he published at Oxford a short work called "A Map of Virginia. With a Description of the countrey, the Commodities, People, Government, and Religion. Written by Captaine Smith, sometimes Governour of the Countrey. Whereunto is annexed the proceedings of those Colonies &c. by W. S." This latter part of the publication, which purports to be drawn from the writings of certain colonists, was afterwards reprinted, with alterations, as the Third Book of the Generall Historie, from the title of which it appears that W. S. stood for the initials of one William Simons, Doctor of Divinity.

There is in the text of this tract only one passage bearing upon the point now principally in dispute. Among the customs which he describes as peculiar to the Indians was the form of execution practised against criminals. Their heads, he says, were placed upon an altar, or sacrificing-stone, while "one with clubbes beates out their braines." During his captivity, he adds, not indeed that he had actually seen this mode of execution, but that an Indian had been beaten in his presence till he fell senseless, without a cry or complaint. Here is, therefore, the whole idea of the story which he afterwards made public. Practised lawyers may decide whether, under the ordinary rules of evidence, this passage amounts to a positive implication that he had himself not been placed in the position described, or it may perhaps be possible for future students to explain why Smith should have suppressed his own story, supposing it to have been true. The inference is very strong that, if anything of the sort had ever occurred, it would certainly have been mentioned here, and this argument is considerably strengthened by a short narration of the facts of his imprisonment, given in the second part of the pamphlet, for which Dr. Simons is the nominal authority. This version is as follows: —

"A month those barbarians kept him prisoner, many strange triumphs and conjurations they made of him, yet he so demeened himself amongst them as he not only diverted them from surprising the fort, but procured his own liberty, and got himself and his company such estimation among them that those savages admired him as a Demi God. So returning safe to the Fort, once more stayed the pinnace her flight for England."

This work was, as above stated, afterwards reprinted, under the author's name, as the Third Book of the Generall Historie. The passage just quoted is there reproduced with the evidently intentional substitution of "six or seven weekes" for "a month," as in the original. In the Generall Historie the concluding paragraph is omitted, and in its place stands, — "The manner how they used and delivered him, is as followeth." And then, breaking abruptly into the middle of the

old narrative, the story which has been quoted at such length was interpolated.

The narrative in the second part of the Map of Virginia, of which the above extract forms a part, is signed by the name of Thomas Studley alone, while in the Generall Historie the enlarged account bears also the signatures of Edward Harrington, Robert Fenton, and Smith himself. A question may arise as to the extent to which these persons should be considered as dividing with Smith the responsibility for the story. Thomas Studley, however, died on the 28th of August, 1607. Both he and Edward Harrington had lain four months in their graves before Smith ever had heard of Powhatan or Pocahontas. The date of Robert Fenton's death is not so clear, but there is no reason to suppose that he had any share in the narration of events which Smith alone witnessed.

The argument so far as the Oxford tract is concerned would therefore seem to be strong enough, even if it went no further. But it becomes irresistible when we find that this tract not only mentions Pocahontas, but actually introduces her in the *rôle* of guardian angel and saviour of Smith's life, although it says no word of her most famous act in this character. The allusion occurs towards the end of the pamphlet, where the assumed writer takes occasion to defend Smith against certain charges, one of them being an alleged scheme on his part of marrying Powhatan's daughter Pocahontas in order to acquire a claim to the throne. The writer denies the charge, and adds : —

"It is true she was the very nonparell of his kingdome and at most not past 13 or 14 yeares of age. Very often shee came to our fort with what shee could get for Captaine Smith, that ever loved and used all the countrie well, but her especially he ever much respected : and she so well requited it that when her father intended to have surprised him, shee by stealth in the darke night came through the wild woods and told him of it."

This Oxford tract of 1612 may be considered as decisive of the fact that, down to that date, the story of Pocahontas had not been made public. We are obliged to confess that no

explanation whatever, consistent with an assumption of the truth of the later narrative, occurs to the mind to account for Smith's continued silence so long after his connection with the Colony had ceased.

Here we take leave of Smith, as an authority, for a period of some ten years, during which he published but one work, not relating to the present subject. But an entirely new class of colonists had, in 1610 and 1611, taken the place of the first settlers, almost exterminated by the disasters of 1609 – 10. Among the new-comers there arrived in the train of Lord Delaware, in 1610, a certain William Strachey, who held the office of Secretary of the Colony. Little is known of Strachey, except that, after his return to England, he compiled a work called the "Historie of Travaile into Virginia," never completed in its original plan, but still extant in two neatly written manuscripts, and printed by the Hakluyt Society in 1849. The date of its composition was probably about the year 1615. It consists largely of extracts from Smith's previous works, though without acknowledgment of their origin; but it also contains original matter, and especially some curious references to Pocahontas. (See Deane's edition of the True Relation, p. 72.) There is, however, no reference, direct or indirect, to her agency in saving Smith's life, and no trace of the high esteem which such an act would have won for her.

Next in order after Strachey's manuscript, we have a work which is quite original, and which gives, perhaps, the best account of the Colony ever made public by an eye-witness. This is a small volume in quarto, printed in London in 1615, and called "A True Discourse of the Present Estate of Virginia . . . . till the 18th of June, 1614, together with . . . . the Christening of Powhatan's daughter and her Marriage with an Englishman. Written by Raphe Hamor, late Secretarie in the Colonie." In it we find a minute and graphic story how "Pocahuntas, King Powhatan's daughter, whose fame has spread even to England under the name of Non Parella," while staying with some tribe, subject to her father, on the Potomac, was seized and carried away by Captain Argol, who

had sailed up that river on a trading expedition. Her imprisonment as a hostage at Jamestown, her visit to her father's residence with Sir Thomas Dale and a strong force of English, Powhatan's failure to redeem her, and her subsequent marriage to John Rolfe, on the 5th of April, 1613, are all circumstantially narrated; and finally an extremely interesting account is given of a visit which Hamor made to Powhatan, and of the conversation he had with that extraordinary savage. Besides this work of Hamor, the volume also contains several letters from persons in Virginia, one of which is by John Rolfe himself, written with the single object of justifying his marriage. Afterwards, when the arrival of Pocahontas in England had excited an interest throughout Europe in her story, Hamor's book was translated and published in Germany.

Although there are repeated allusions to Pocahontas in the works already mentioned, it is in Hamor that she makes, for the first time, her appearance as a person of political importance. In the True Relation, Smith represented her as a pretty and clever child of ten years old, who was once sent with a trusted messenger by Powhatan to the fort to entreat the liberation of some Indians whom Smith had seized. The Oxford tract mentions her as a friend of Smith's, but a mere child. Strachey gives a curious description of her intimate relations with the Colony during his residence there. "Pocahuntas, a well featured but wanton yong girle, Powhatan's daughter, sometymes resorting to our fort, of the age then of eleven or twelve yeares, would get the boyes forth with her into the markett place, and make them wheele, falling on their hands, turning up their heeles upwards, whome she would followe and wheele so her self, naked as she was, all the fort over." All this seems to indicate that she was considered merely as a child, whose age made her a general favorite. But from the time when Argol treacherously seized her, she occupied an important position, in the first place as the guaranty of a peace which Powhatan promised, and seems to have faithfully preserved during the remainder of her life and of his own; in the second place as a person well calculated to excite

interest in England in behalf of the Colony; and, finally, as an eminent convert to the English Church, through whom a powerful religious influence might, it was believed, be exercised among her father's subjects. Hamor's book is filled with her history, and Rolfe's letter shows much anxiety to prove the propriety of his course in marrying her. Both writers were interested in exciting as much sympathy for her as could be roused. Yet neither the one nor the other alludes in any manner to the act which has since become her first claim to praise, and in the light of which the rest of her story has been almost thrown out of sight. There is no reason to suppose that in Virginia at this time the persons best informed were yet aware that Pocahontas had ever saved Smith's life.

In the month of June, 1616, Sir Thomas Dale arrived at Plymouth, on his return home, bringing with him, among his suite, the baptized Pocahontas, now called Rebecca Rolfe, who, with her husband and child, came at the charge of the Company to visit England, and to prove to the world the success of the Colony. She became at once the object of extraordinary attention, and in the following winter she was the most distinguished person in society. Her portrait, taken at this time, still exists, and shows a somewhat hard-featured figure, with a tall hat and ruff, appearing ill at ease in the stiff and ungraceful fashions of the day. Gentlemen of the court sent the engraving, as the curiosity of the season, in their letters to correspondents abroad. The Church received her with great honor, and the Bishop of London gave her an entertainment, celebrated in enthusiastic terms by Purchas. At the court masque, in January, 1617, she was among the most conspicuous guests. The king and queen actually received her in special audiences; and to crown all, tradition reports, with reasonable foundation, that King James, in his zeal for the high principles of divine right and the sacred character of royalty, expressed his serious displeasure that Rolfe, who was at best a simple gentleman, should have ventured so far beyond his position as to ally himself with one who was of imperial blood.

Just at this time, when the influence of London society had set its only too decisive stamp of fashion on the name of the Indian girl, and when King James had adopted her as rightfully belonging within the pale of the divinity that hedges a king, — just at this moment Samuel Purchas, "Parson of St. Martin's by Ludgate," published the third edition of his "Pilgrimage." The excellent Purchas, although not himself an explorer, was an enthusiast on the subject of travels and adventures, and in compiling the collection which is now so eagerly sought and so highly valued by collectors of books he had, so far as related to Virginia, the direct assistance of personal witnesses, and also of manuscripts now unhappily lost except for his extracts. He was well acquainted with Smith, who "gently communicated" his notes to him, and who was now in London, and visited Pocahontas at Brentford. Purchas himself saw Pocahontas. He was present when "my Hon^ble. and Rev^d. Patron the Lord Bishop of London, D^r. King, entertained her with festivall state and pompe beyond what I have seen in his great hospitalitie afforded to other ladies," in his "hopefull zeale by her to advance Christianitie." He knew Tomocomo, an Indian of Powhatan's tribe, who came with her to England. "With this savage I have often conversed at my good friend's Master Doctor Goldstone, where he was a frequent guest; and where I have both seen him sing and dance his diabolicall measures and heard him discourse of his countrey and religion, Sir Thomas Dale's man being the interpretour." He knew Rolfe also, who lent him his manuscript discourse on Virginia. Yet in Purchas's book no allusion can be found to the heroic intervention on behalf of Smith, the story of whose captivity is simply copied from Simons's quarto of 1612; the diffuse comments on men and manners in Virginia contain no trace of what would have been correctly regarded as the most extraordinary incident in colonial history.

Silence in a single instance, as in Wingfield or in Strachey, might be accounted for, or, at all events, might be overlooked. But in the course of this examination we have found silence

absolute during a long period of years and under the most improbable circumstances. Wingfield, Smith himself, Simons, Strachey, Hamor, Rolfe, and Purchas, all the authorities, without exception, known to exist, are equally dumb when questioned as to a circumstance which, since 1624, has become the most famous part of colonial history. The field is literally exhausted. There exist no other sources from which to draw authentic information. Nothing remains but to return to Smith, and to inquire when it was that this extraordinary story first made its appearance, and how it obtained authority.

The blaze of fashionable success that surrounded Pocahontas in London lights up the closing scene of her life. It is said that she was obliged, against her will, to set out on her return to Virginia, but she never actually left the shores of England. Detained in the Thames by several weeks of contrary winds, her failing strength altogether gave way; and in March, 1617, in the poor word-play of Purchas, "she came at Gravesend to her end and grave." Her father, Powhatan, survived her less than a year.

Smith, in the mean while, was busied with projects in regard to New England and the fisheries. His efforts to form a colony there and to create a regular system of trade had very little success; but to spread a knowledge of the new country among the people of England, he printed, in 1616, a small quarto, called "A Description of New Engiand," and in 1620 he published another pamphlet, entitled "New England's Trials," a second and enlarged edition of which appeared in 1622. Here, at last, in 1622, we find the long-sought allusion to his captivity, in the following words: —

"For wronging a soldier but the value of a penny I have caused Powhatan send his own men to Jamestowne to receive their punishment at my discretion. It is true in our greatest extremitie they shot me, slue three of my men, and by the folly of them that fled, took me prisoner; yet God made Pocahontas the King's daughter the means to deliver me; and thereby taught me to know their treacheries to preserve the rest."

This in order of time is the third version given by Smith of his own adventure, the account in the Generall Historie being the fourth. Each of these four stories is more or less inconsistent with all the others; but this of 1622 is, we are sorry to say it, more certainly mendacious than any of the rest. Read it in whatever light we please, it is creditable neither to Smith's veracity nor to his sense of honor. "By the folly of them that fled," he now states that the Indians succeeded in capturing him. All the other versions agree in this, that at the time Smith was attacked and his two men slain he was quite alone, except for his Indian guide, whom he used as a shield. To throw upon the invented cowardice of companions who were far away, out of sight and out of hearing of the contest, the blame for a disaster which was solely due to his own over-boldness, was not an honorable way of dealing with his command. Perhaps it would be better to leave this point unnoticed, in deference to Smith's real merits, but unfortunately this is not the only passage in his works in which the same tendency is apparent.

Nevertheless, the fact remains, that here for the first time the story of Pocahontas appears in print. "God made Pocahontas the means to deliver me." The devout form is characteristic of the age, though the piety of a man like Smith, if his autobiography gives a true idea of his course of life, must have been a curious subject for study. But for those who assume, with Mr. Deane, that the agency of Pocahontas is a pure invention, this paragraph becomes doubly interesting, as showing to what a degree of quaint dignity the Elizabethan age could rise, even in falsehood.

The first appearance of this famous story can therefore be fixed with sufficient certainty within five years between 1617 and 1622, although the published account in all its completeness is only to be found in the Generall Historie, printed in 1624, from which such copious extracts have already been quoted as to make any further allusion unnecessary. There remains only one point of difficulty requiring attention in this work.

Smith has there stated (pp. 121 – 123) that, when Pocahontas came to England, he wrote for her a sort of letter of introduction to the Queen, or, in his own words, "a little booke to this effect to the Queen, an abstract whereof followeth."

"Some ten yeeres agoe, being in Virginia and taken prisoner by the power of Powhatan their chiefe King .... I cannot say I felt the least occasion of want that was in the power of those my mortall foes to prevent, notwithstanding al their threats. After some six weeks fatting amongst those Salvage Courtiers, at the minute of my execution, she hazarded the beating out of her owne braines to save mine, and not onely that, but so prevailed with her father, that I was safely conducted to Jamestowne."

If Smith really wrote this statement to the Queen, and the Queen received the letter, the case unquestionably becomes even more complicated than before. But the fact is, that the letter itself rests on the authority of the Generall Historie, and has neither more nor less weight than the other statements in that work. It is by no means necessary to believe that this "abstract of the effect" of the little book is freer from interpolations than the text of the Generall Historie elsewhere. At the time it was published, in 1624, not only had Pocahontas long been dead, but Queen Anne herself had, in 1619, followed her to the grave, and Smith remained alone to tell his own story. The Virginia Company certainly had no interest in denying the truth of a story so admirably calculated to draw popular sympathy towards the Colony. But even if it be granted that Smith's letter as it stands was really sent to the Queen, the argument against its truth, so far as it is based on the silence of all previous authorities, is left quite untouched; and if there is no conclusive evidence to prove that the story was unknown in 1617, it is at least equally difficult to prove that, if known, it was believed. Smith's character was certainly a matter of warm dispute in his own day, and his enemies seem to have been too numerous and strong for even his energy and perseverance to overcome. No more decisive witness on this point is needed than Thomas Fuller, himself one of Smith's contemporaries, whose "Worthies of

England" first appeared some thirty years after Smith's death, when the civil wars had intervened to obliterate the recollection of all personal jealousies, and when Smith himself must have been almost as little remembered as he is to-day. Fuller devotes a page to his history in the following vein: —

"From the Turks in Europe he passed to the Pagans in America where, towards the latter end of the reign of Queen Elizabeth, such his perils, preservations, dangers, deliverances, they seem to most men above belief, to some beyond truth. Yet have we two witnesses to attest them, the prose and the pictures, both in his own book; and it soundeth much to the diminution of his deeds that he alone is the herald to publish and proclaim them."

The essential evidence on each side of this curious question has now been exhausted, although it would be easy to argue indefinitely in regard to Smith's general character. This must indeed be done by the first historian who attempts again to deal with the history of the Virginia Colony. But although the argument has been stated fairly, and may now be left for future and final judgment, some reasonably clear theory is still required to explain the existence of the story now assumed to be false. If Mr. Deane had departed a little farther than he has done from his sphere of work as an editor, and given the result of his studies in a more general form, his deep acquaintance with the subject would have made his conclusions particularly valuable. As it is, he, like Dr. Palfrey, only hints that Smith, in the latter part of his life, had fallen into the hands of hack-writers, who adapted his story for popular effect. Perhaps, if we may venture to guess at his real opinion, the view he would be inclined to take might be somewhat as follows.

The examination of Smith's works has shown that his final narrative was the result of gradual additions. The influence exercised by Pocahontas on the affairs of the Colony, according to the account given in 1608, was very slight. In 1612 she first appears in her heroic character. Her capture and her marriage to Rolfe gave her importance. Her visit to England, however, made her beyond question the most conspicuous fig-

ure in Virginia, and it became inevitable that romantic incidents in her life would be created, if they did not already exist, by the mere exercise of the popular imagination, attracted by a wild and vigorous picture of savage life.

The history of the emperor's daughter became, as we are led by Smith to suppose, a subject for the stage. Nothing was more natural or more probable. It is not even necessary to assume that Smith himself invented the additions to his original story. He may have merely accepted them after they had obtained a strong and general hold on the minds of his contemporaries.

In the mean while Smith's own career had failed, and his ventures ended disastrously, while in most cases he did not obtain the employment which he continued to seek with unrelaxed energy. In 1622, however, a great disaster occurred in Virginia, which roused the greatest interest and sympathy in England, and gave occasion for renewed efforts in behalf of the Colony. The Indians rose against the English, and in the month of May a terrible massacre took place around Jamestown. The opportunity was not one to be lost by a man who, like Smith, while burning to act, was still smarting under what he considered undeserved neglect, and he at once hastened to offer his services to the Company, with a plan for restoring peace; but his plan and his offer of services were again declined. Still, the resource of which he had already made such frequent use remained, and by publishing the Generall Historie he made a more ambitious appeal to the public than any he had yet attempted. In this work he embodied everything that could tend to the increase of his own reputation, and drew material from every source which could illustrate the history of English colonization. Pocahontas was made to appear in it as a kind of stage deity on every possible occasion, and his own share in the affairs of the Colony is magnified at the expense of all his companions. None of those whose reputations he treated with so much harshness appeared to vindicate their own characters, far less to assert the facts in regard to Pocahontas. The effort indeed failed of its object,

for he remained unemployed and without mark of distinction. "He led his old age in London, where his having a Prince's mind imprisoned in a poor man's purse rendered him to the contempt of such who were not ingenuous. Yet he efforted his spirits with the remembrance and relation of what formerly he had been and what he had done." So Fuller writes, who might have known him in his later years. He died quietly in his bed, in London, in June, 1631; his will is extant, and has been published by Mr. Deane, but furnishes little new information; in the absence of criticism, due perhaps to the political excitement of the times, his book survived to become the standard authority on Virginian history. The readiness with which it was received is scarcely so remarkable as the credulity which has left it unquestioned almost to the present day.

# THE BANK OF ENGLAND RESTRICTION.

## 1797 – 1821.*

DURING the eighteenth century the mechanism of trade had been elaborated in Great Britain to a high point of perfection. London had become in a great degree the centre of commerce for the whole world, while the Bank of England was the business centre of London. But the Bank had a double sphere of usefulness. As a private corporation, it exercised, not less by the high character of its directors than by the amount of its capital and the privileges of its charter, a great influence over all foreign and domestic trade. By common agreement, its notes circulated within London to the exclusion of all other bank-paper. Its discounts represented at that time a far greater proportion of the active capital of England than they now do. But its operations were not restricted within the limits of ordinary banking; it was also a recognized official agent. As a national establishment, it issued the coin, managed the debt, took charge of government deposits, and made advances to the Exchequer and the Treasury, on security of Exchequer Bills. In the same capacity, it was expected to perform the difficult duty of maintaining a supply of gold, not merely for circulation, but in anticipation of any sudden drain or panic, which might cause a run upon the other banking institutions of the country. It was obliged, therefore, to purchase at a fixed rate all the gold which was brought to its counters. Thus, as a bank of discount, it held the exclusive privilege of discounting government paper; as a

* From the North American Review for October, 1867.

bank of deposit, it alone held the public balances; as a bank of issue, its circulation alone passed through the hands of the government as well as of the public. Its notes, when not issued in loans on Exchequer Bills to the government, or in payment for the precious metals as already mentioned, could only pass into circulation through the medium of discounts furnished to merchants. Neither then, nor at any time, has the Bank had other than these three means of issuing its paper; and as it is clear that, so far as the second is concerned, no notes could be sent out which did not represent their equivalent in coin or bullion brought in, the only possible mode of issuing an excess of paper must have been either by loans to the government on security of Exchequer Bills, or in regular and legitimate commercial discounts.

All foreign and most provincial payments were ultimately settled by drafts on London. But the country merchants and others, who had occasion in this manner to extend their connections beyond the limits of a district, usually found it convenient to deal through the local bankers of their neighborhood, rather than to draw upon correspondents of their own. In 1797, there were about three hundred and fifty such country banks in England and Wales, most, if not all, of which were banks of issue; and as they were always liable to be called upon to redeem their notes either in gold, in Bank of England notes, or in bills of exchange drawn on London, it is evident that their circulation was subject to all the variations of the London money-market.

Besides this practical check, yet another control was exercised by the Bank of England over the credit operations of the country. Every private banker naturally felt that his own credit depended upon the solvency of his customers; and he was obliged, by the very nature of his business, to acquire the most accurate knowledge in his power of the people who dealt with him. In precisely the same way the London banker, his correspondent, looked carefully to the country client's credit, and to the character of the bills which he dealt in; while in his own city the Londer banker was subjected

to the scrutiny of the business community of London, whose opinions, centring upon one point, guided the policy and the particular discounts and accommodations of the Bank of England. Thus again the Bank was at once the head and heart of English credit; it exercised a controlling influence even upon the remote provincial trader.

So far as the currency was concerned, the Bank could, by contracting its issues, affect in a short time the whole circulation of England; and naturally, when such a contraction had taken place, a renewed expansion on its part would be likely to result in a similar movement on the part of private bankers. But the antiquated and mischievous legislation of Parliament still maintained, and, in spite of the severest practical lessons, long continued to maintain, a legal maximum of interest at five per cent, even when the government itself was borrowing at six. At present the Bank regulates its discounts by raising or lowering its rate according to the value of money in the open market. But while the usury laws were in force, the Bank continued to lend its credit at five per cent, whether the market value was at two or at twenty; and it possessed no means of restricting its discounts and contracting its circulation other than that of refusing a certain proportion of each applicant's paper, without regard to his solvency or credit. Such a measure was seldom resorted to, since it was calculated to aggravate the evils of a financial pressure, by sacrificing the public in order to save the Bank. In practice, therefore, it will be seen that the Bank avoided the exercise of any other control over its discounts and circulation than is implied by a proper regard for the soundness of the bills it discounted. The directors might exercise more or less of caution in their loans, according as individual credit varied; but they never during the Restriction attempted to act upon exchange or general credit, either by contracting or by expanding their issues.

The average amount of Bank of England notes in circulation, during ten years before the Restriction, was £10,800,000. The best authorities estimate that the coin may have then amounted to about £20,000,000, or somewhat more. There

was also a large quantity of country bank paper; while certain wealthy districts, as Lancashire, for example, used no other currency than bills of exchange, which were passed from hand to hand, and in every case indorsed by the holder. There can be no reasonable confidence placed, therefore, in any estimate which assumes to establish any fixed sum as representing the value of English currency, previous to the Restriction. Perhaps £40,000,000 would be a moderate value to assign for it; and from this calculation Scotland and Ireland are excluded, since their currency systems were independent of England, and exercised no more influence upon hers than those of Holland or Hamburg.

The great war, which lasted, with only a few months' intermission, for upwards of twenty years, began in February, 1793. It was preceded and accompanied by a violent commercial crisis throughout Europe, which caused in England a great number of bankruptcies, and a heavy fall in prices, the country banks suffering especially; but the Bank of England succeeded in maintaining its credit unimpaired under the shock; and, in spite of every difficulty, continued its specie payments and its ordinary discounts, to the immense relief of the mercantile community. Two years of the war passed away without altering this position of affairs. It was not till 1795 that a drain of bullion to the Continent began, which obliged the Bank directors to resort to the extraordinary measure of contracting their issues by rejecting a certain proportion of the applications made upon them for discounts, without regard to the credit of the applicants. During the next two years the Bank circulation was steadily diminished, as the supply of gold became smaller and smaller. But this policy of contraction was seriously hampered by the necessities of Mr. Pitt, then Prime Minister, who insisted upon advances, which the directors could not honestly furnish. The Bank records are filled with repeated remonstrances addressed to Mr. Pitt on this account, and these, in February, 1796, were carried to the extent of an absolute refusal to discharge the bills drawn; while again, in July of the same year, a similar

refusal was only overcome by the positive assurance of Mr. Pitt that it would be impossible to avoid the most serious and distressing embarrassments to the public service, unless an advance to the extent of £800,000 were made. The Bank yielded, but only under the strongest protest, declaring that nothing but the extreme pressure and exigency of the case could in any shape justify the directors in acceding. Whether this source of difficulty was due to bad management on the part of Mr. Pitt, or whether he had no choice but to lean upon the Bank, is of little consequence. The directors, at all events, carried out their policy of contraction. While the drain of gold continued, and their treasure fell from £6,000,000 in 1795 to £2,000,000 in August, 1796, the circulation was simultaneously reduced from £14,000,000 to £9,000,000. But violent as this contraction was, it failed to counteract the causes of the drain. Foreign subsidies, the payment for large quantities of imported grain, and of articles the price of which had been enormously increased by the war demand, prevented the exchange from rising. It is estimated that for three years, from 1794 to 1796, these extraordinary payments amounted to £40,000,000, — a calculation which is certainly not extravagant, if compared with the length of time and the amount of pressure required to restore the exchanges.

It is difficult to say what more could have been done by the Bank in order to preserve the country from the evils of an inconvertible currency. The directors might have refused to advance another shilling in loans, and, in order to save themselves, might have forced a national bankruptcy, as well as general private ruin; but they could scarcely have reduced their issues more resolutely than they did, or resisted more obstinately the entreaties of the merchants. These last were mercilessly sacrificed; and their fate was especially hard, since the crisis appears to have been caused by no act of theirs, but solely by a combination of political and natural agencies, by bad harvests and foreign wars, over which they could have exercised no control, and on the occurrence or the cessation of which they could not have calculated.

The measures thus taken by the Bank were in fact successful. Early in 1797, the tide had already turned; the foreign exchanges began to improve; and there can be no doubt that, had the Bank been able to stand another month or two of pressure, gold would have flowed plentifully into its coffers. But precisely at the time of extreme exhaustion, after the foreign drain had been checked, but when the Bank was too weak for further resistance, a sudden panic seized the people of England. An ungrounded alarm of French invasion caused a run upon the banks of Newcastle, and obliged them to suspend payment. From Newcastle, the panic spread in all directions. Every country banker rushed to the Bank of England for assistance or for gold. The Bank responded by forcing its issues down to £8,640,000, while its treasures fell to £1,200,000, and the panic naturally grew more and more violent. Hopeless of averting their fate, the directors at last sent word to Mr. Pitt that suspension was inevitable; and on the morning of Monday, the 27th of February, an Order in Council, issued the preceding day, was posted on the doors of the Bank, forbidding further payments in cash.

The policy of the Bank throughout this crisis has been since that day very generally criticised; and the directors themselves afterwards expressed it as their opinion that the contraction had been pressed too far, until it contributed to bring about the very difficulty it was intended to preclude. It is contended that a bolder policy should have been adopted, and that the discounts should have been liberally increased, while the gold should have been paid out down to the last guinea. In support of this theory is instanced the celebrated crisis of 1825, when the Bank, in face of a drain which reduced its stock of gold to £1,027,000, increased its issues from £17,000,000 to 25,000,000, and succeeded in restoring confidence and maintaining its payments. However this may be, it is at least a matter of regret that Mr. Pitt should have sanctioned suspension before exhausting every possible alternative. At the worst, the Bank could only have refused to redeem its notes. While there was a single chance left of

escaping this final disaster, neither Mr. Pitt nor the Bank directors were justified in neglecting it. The mere political consequences of suspension, in that disastrous year, were a triumph to the enemy as important as the mutiny at the Nore or the Treaty of Leoben.

Mr. Pitt, however, felt the necessity of maintaining the credit of the Bank; and he appears to have thought that this might be done by giving to the suspension an official appearance, and throwing upon it the character of a compulsory act of government. He represented the Bank as a passive, or even unwilling, instrument, in the hands of the Privy Council. The expedient was shallow, and unworthy of so great a man; nor was it likely to deceive any person, however dull of comprehension he might be. But its result was fortunate; for while Mr. Pitt declared that the affairs of the Bank were in the most affluent and flourishing condition, and that the restriction was only a precautionary government measure, which in a few weeks would be removed, he established, unconsciously as we must believe, a legal fiction of some value. Parliament never recognized any incapacity on the part of the Bank to meet its obligations, but only a temporary restriction, created by itself, and limited by law to a certain period. There was at least a delicate distinction favorable to national pride and private credit involved in this idea that there was no actual bankruptcy in the case, but that the government had seen fit, for the public convenience, to relieve the Bank for a time from a duty which it was still ready and able to perform.

It was not unnatural, indeed, that Mr. Pitt should make use of this or any other deception in order to quiet the general alarm. The idea of inconvertible currency was, in 1797, exclusively associated with the Continental paper of the American Congress, and with the assignats of the French Directory. It was supposed by men like Fox and Lord Lansdowne that the mere fact of inconvertibility must soon destroy that confidence in paper which enabled it to represent values. A few months, it was believed, would bring about

this decay of credit. To provide against such a disaster, extraordinary efforts were required. On the very day of suspension, a great meeting was held at the Mansion House, the Lord Mayor presiding; and more than three thousand business men pledged themselves, by resolution, to receive and to make their payments in bank-notes, as equivalent to coin. A nearly similar paper was signed and published by the Lords of the Council. At the present time, such a pledge would, in similar circumstances, be considered as quite superfluous; but in that day it had a value, and tended to restore public confidence. Had the foreign drain still continued, bank-paper would, no doubt, have rapidly fallen to a discount, in spite of all the resolutions that could have been passed; but we have already seen that this cause of difficulty had ceased to act. The only effect of suspension was to lower the exchanges for a very few days, after which they again rallied, and before the close of the year they had risen to the highest point ever known. The Bank at once increased its issues, and commerce returned to its regular routine.

The suspension having once taken place, it became necessary for Parliament to intervene, not merely to legalize the act, but to establish a status for the new condition of the Bank. A secret committee was appointed, which made elaborate investigations, and concluded by reporting a bill, indemnifying the governor and directors for all acts done in pursuance of the Order in Council; superseding all actions which might have been brought against them for refusing payments; prohibiting them from issuing cash, except in sums under twenty shillings; sheltering them from prosecutions for withholding payment of notes, for which they were willing to offer other notes in exchange; restricting them from advancing to the Treasury any sum exceeding £600,000; obliging the collectors of revenue to receive bank-notes in payment; protecting the subject from arrest for debt, unless the affidavit to hold him to bail contained a statement that the amount of debt claimed had not been tendered in money or bank-notes; and limiting the duration of the restriction to the 24th of June following.

It is interesting to observe how cautiously the government acted. The policy of Mr. Pitt may not have been bold, nor necessarily correct; but it was at least free from the grievous mistakes which have ruined or dishonored almost every country where an inconvertible currency has existed. He began by treating the suspension as a temporary difficulty, and carefully limiting its duration. In this respect, his successors invariably followed his example; and never, during the next twenty-three years, was there a time when Parliament allowed the country to consider the restriction as other than a temporary measure, for the termination of which a provision was made by law. He further pledged the government not to make an improper use of the Bank resources, nor to tamper with the currency by obtaining excessive advances, and this pledge he honestly observed. Finally, he refused to make the bank-note a legal tender, except as between the government and the public, still allowing the creditor to insist upon payment in coin, if he chose to do so; and leaving open to him his ordinary process in law, except only the power of arrest in the first instance. England probably owes more than she is aware of to Mr. Pitt for his forbearance in regard to the currency. His necessities were great, and his power was unlimited. He might have used paper money as was done by contemporary financiers; but the example which he set became a law for his successors, so that whatever mistakes he or his imitators may have made, they are not chargeable with that of tampering with the currency.

The Restriction Act passed without opposition, and in June was continued till one month after the commencement of the next session. In the mean time, gold began again to flow into the Bank, which held in August treasure to the amount of £4,000,000, against a circulation of £11,000,000. When Parliament again met in the autumn, the Bank directors announced themselves ready to resume payments, "if the political circumstances of the country do not render it inexpedient."

Had Mr. Pitt been able to foresee the course which events

would take during the next ten years, he would surely have acted at once upon this opportunity. The dangers and temptations of irredeemable paper were too obvious for any statesman to incur them, unless under an absolute necessity. But Mr. Pitt probably foresaw something very different from what actually occurred. He had every reason to expect a series of monetary convulsions and commercial misfortunes, such as had harassed him since 1792. On the other hand, he saw that none of the prophesied evils had really followed restriction. It had been proved that bank-paper did not depend for its credit merely on its convertibility. Month after month had passed away, not only without bringing depreciation, but even rapidly increasing the stream of precious metals which flowed towards England, so that people were little inclined to dwell upon the dangers or temptations of restriction, and probably overestimated its value as a safeguard against panic. They were already demoralized. Mr. Pitt was not ashamed to fall back upon the hint given by the Bank directors, and to declare "that the avowal by the enemy of his intention to ruin our public credit was the motive for an additional term of restriction"; — thus, as Mr. Tierney rejoined, in order to leave the enemy no credit to attack, destroying it himself; for it is difficult to see how France was prevented by the Restriction from any action upon public credit, except precisely that of causing another restriction.

The bill, however, by which the measure was continued till one month after the conclusion of peace, passed with little opposition, Mr. Fox and his friends having ceased to take part in the debates. Had the Bank been now obliged to resume its cash payments, it would have had no great difficulty in maintaining them till 1808 or 1809, when it must inevitably, from mere political causes, have again broken down. But the occasion was lost, and from this time the Restriction took its place among the permanent war-measures of the government.

Previous to the suspension, no bank-note of less than five pounds in value was allowed to circulate. Under the new state

of affairs this prohibition was removed, and notes of one and two pounds began rapidly to drive gold from ordinary use. With this exception, the public appears to have been quite unaffected by the change in the currency. Throughout the year 1798 the Bank continued to receive treasure, and the foreign exchanges continued favorable, until at the end of February, 1799, there was an accumulation of more than £7,500,000 in the Bank vaults, against a circulation in notes of less than £13,000,000. Apparently nothing could be more solid than such a position. No expansion of consequence occurred in the Bank circulation; and yet, by the close of 1799, the exchanges had turned against England, and the gold began to disappear as rapidly, or almost as rapidly, as it had accumulated. The explanation of this sudden revolution was simple. A deficient harvest had caused large importations of corn; a severe commercial crisis at Hamburg had produced a considerable pressure for the immediate transmission of funds from England; and the war on the Continent created a perpetual demand for gold to supply the armies. Had the Bank now been obliged to redeem its notes, it might probably have contracted its issues. Instead of doing so, it extended them in proportion to the increased demand for discounts thrown upon it by the rise in the market rate of interest, and the circulation rose till in the first quarter of 1801 it averaged nearly £16,500,000. The price of gold also rose, until it stood at a premium of ten per cent.

These events naturally caused uneasiness; they gave rise, in fact, to the first currency controversy. Mr. Boyd, a member of Parliament, published a pamphlet with the object of proving that the depreciation was due to the excess of bank-notes. He was answered by Sir Francis Baring and Mr. Henry Thornton, whose work remains to this day a standard authority. As the question then raised was practically identical with that which ten years afterwards excited the most elaborate and earnest discussion, we shall not now stop to examine into it. Events soon decided in favor of Mr. Boyd's opponents. The Bank continued its policy undisturbed; the

pressure ceased; during 1801 and 1802 the foreign exchanges again rose, and gold fell almost to par. It seems to be beyond dispute that the temporary depreciation of 1801 was preceded by the fall of exchange, and was caused by it; and that, when the accidental foreign demand for gold had been satisfied, the currency returned to its natural value, without any effort on the part of the Bank, or any artificial pressure on credit or on the circulation.

Without admitting this to be the case, it appears scarcely possible to explain the course which events afterwards took, and the perfect stability of the currency during a number of years when the circulation was still further enlarged. The Treaty of Amiens was signed in March, 1802; and the interval of peace, short as it was, allowed Great Britain a momentary relief of inestimable value. But the Restriction Act was again continued for another term, and the Bank circulation rose to nearly £ 17,400,000, without producing any sensible effect on exchange or on the price of gold. War was resumed in May, 1803, but without affecting the value of the currency, which during the next five years remained stationary in its amount, or only varied slightly between £ 16,000,000 and £ 17,000,000. The Bank, meanwhile, anxious to maintain its reserve of bullion, offered a standing premium of about three per cent for gold, and hence it has been usually supposed that the bank-notes were actually depreciated to this extent. This, however, was not the case. Under such circumstances the exchanges become the only true standard, and in those days the quotations of exchange included any existing depreciation of paper; the nominal, not the real, exchange was always given, so that, in the want of any fair quotations of gold, we can only estimate its fluctuations in value by means of the recorded fluctuations in exchange. It appears that these were very slight, and rather in favor of England than against her, so that the Bank had actually accumulated in 1805 the very unusual sum of £ 7,600,000, — a result which indicates that the bank-notes with which this treasure was bought could not have been depreciated to the full extent of the three-per-cent bonus offered

as an inducement to the seller. During the whole of this period from 1803 to 1808, Bank paper was in fact at par, or not enough below it to have made the exportation of gold profitable in a time of specie payments. There were no doubt intervals when the Bank lost gold, but, if the average of each year be taken, it will be found that the exchanges were uniformly favorable.

No comparison can be just which is drawn between such a state of things as this and the ordinary forced issues of government paper, such as have been known in most countries suffering under prolonged difficulties. There is a distinct difference between the two cases, and we are obliged to dwell with emphasis upon this difference, because we believe that it entirely removes the English currency from the same class with ordinary instances of depreciation. Usually the issue of paper has been assumed by governments themselves, and such issues have been made directly in payment of expenses, without providing on the same scale for a return of the paper put out, or consulting in any way the wants of the people. Bank of England paper was in no sense a government issue. It was not even government paper, but merely that of a private banking corporation, which was conducted on very strict banking principles, and whose notes, so far as they were in excess of public wants, were inevitably returned at once to the bank counters. The government, therefore, was not to blame if paper was issued in excess; but in such a case it must have been the Bank directors who failed to observe proper rules in their extensions of credit either to the government or to individuals.

It is necessary, therefore, to turn aside for a moment in order to examine the Bank rules of that day in regard to their ordinary action upon the circulation, since it is here that the secret will be found, not only of the steadiness of value which marked the currency during the first ten years of war, but of its extraordinary fluctuations afterwards, — fluctuations which are quite inexplicable on the ordinary supposition of a forced issue. It must be remembered that the usury laws fixed the highest legal rate of interest at five per cent. The

Bank rule, during the whole period of Restriction, was to discount at this rate all good mercantile bills offered, not having more than sixty-one days to run; and in making these advances the only duty which the directors considered themselves obliged to observe was that of throwing out, so far as possible, all bills which there was reason to believe represented speculative transactions. In other respects the Bank was perfectly passive. It neither contracted nor expanded its own issues, but allowed the public demand to contract or expand the currency, in the firm conviction that the public would not retain more notes than it actually required. Naturally the demand for discount at the Bank varied according to the market rate of interest outside; and when private bankers lent money at three per cent, comparatively few persons cared to pay five to the Bank of England. During the early part of the war the Bank rate was in fact almost always higher than that in the open market, and consequently the Bank issues were moderate. By a regularly self-balancing principle, the advances made to government in an ordinary state of affairs diminished the private demand, since the government at once paid away to the public the notes it received from the Bank, and this money, coming back to the private bankers, enabled them to extend their discounts and to accommodate those merchants who would otherwise have been obliged to apply to the Bank. It is merely a theoretical question, what would have been the result had government obliged the Bank to make excessive advances on its account. In point of fact, the case did not occur, and government contented itself with moderate accommodation; while, as a rule, the private demands were greatest when the advances to government were at the lowest point.

Thus the Bank was throughout a mere channel of credit. It did not, and under these rules it could not, exercise any direct control over its issues, and it conducted its business upon much the same principles as would have regulated any sound private banker, whether he issued notes or not. Its theory excluded the idea that it was bound to regard the exchanges or the price of gold, or to interfere in any way with the course

of business. Its sole duty was to lend capital, and it was for the public and for each individual merchant to see that his affairs were in a proper condition, that speculation was avoided, that the exchanges were watched, or to take the consequences of neglecting such obvious precautions.

And so long as each individual did observe a proper degree of precaution, or until political difficulties or some other accidental cause deranged the ordinary state of credit, these rules of the Bank answered the purpose for which they were made. But while the usury laws remained in force, any rise in the market rate of interest was certain to precipitate the whole body of merchants upon the Bank of England, and any crisis which obliged private bankers to seek, instead of furnishing credit, was sure to bring the whole nation to the counters of the Bank. In either of these cases, therefore, the Bank was liable to be driven into an excessive issue of its paper, and extension of its credit. But it did not necessarily follow that such an expansion would lead to a permanent increase of the circulation. On the contrary, whenever the crisis was over, and the rate of interest again had fallen below the Bank standard, the demand for discount would naturally decline, and the circulation would return to its normal state.

For two or three years after the war had been resumed, everything went on in a sound and regular course. Great Britain might have carried on hostilities indefinitely, had she been subjected to no greater pressure. The currency retained its value, and trade its regularity, but taxation was greatly augmented and the cost of production increased. Prices steadily rose, until they attained in 1805 almost as high a range as ever afterwards. With the exception of grain, an article peculiarly liable to be affected by accidental causes, it appears that almost the whole rise in prices, which was afterwards attributed to depreciation of currency, took place during the first twelve or fifteen years of the war, when no depreciation existed. Much of it occurred at a time when paper was highest in credit, and there is no reason for supposing that the same thing would not have equally happened, even if the Bank had continued its specie payments.

This comparatively happy and prosperous state of affairs was not destined to continue. While the English were waging a cheap and effective war on the ocean and in the colonies, while Nelson crushed the combined navies of France and Spain at Trafalgar, and Wellington subdued the Mahrattas in India, Napoleon reached Vienna, and, turning from Austerlitz to Berlin, swept the whole of Germany into the hands of France. From Berlin he turned to Russia, and at Friedland stopped for the mere want of other countries to conquer.

Such successes promised little good to England. Napoleon hastened to turn his new power against her. It was from Berlin, in November, 1806, that he issued the famous decree declaring the British Islands in a state of blockade, confiscating English property wherever found, and prohibiting all intercourse with the British nation. Russia joined the coalition in the following year, and Sweden in 1809. Thus the Continent was closed to English commerce.

Napoleon's decree was an outrage to international law, but the Continental System thus enforced was a prodigious shock to Great Britain. There seemed no end to the losses and complications which it caused. Yet there was still one country apparently beyond its reach, whose commerce was of inestimable importance. The United States of America was still an open market, and the Berlin Decree almost inevitably forced the United States into the arms of England. The British government, however, with characteristic fatuity, actually assisted Napoleon to extend the Continental System even to America. The Berlin Decree, and that of Milan which followed it, had declared the British Islands to be in a state of blockade, and ordered that no ship should enter any port under the control of France, if she came from England, or even had touched at England, or if any part of her cargo was English. The British government retaliated in January, 1807, by issuing an Order in Council interdicting the passage of vessels between any two ports which were not open to British commerce; and in November followed this up by declaring all ports closed to the British flag to be in a state of blockade, and all vessels

trading to or from such ports, or carrying any produce of such countries, to be, with their cargoes, lawful prize. The American government responded to these outrages by interdicting commerce with both England and France.

No ordinary review can undertake so difficult and complicated a labor as that of fairly examining the various effects of these measures on English credit and currency. That British trade with the Continent was annihilated, that it was for a time impossible to determine the course of exchange, and to recover debts, was but the most obvious and immediate result. No sooner did it become evident that the decrees were to be rigorously enforced, than all articles for a supply of which England depended on the Continent rose to speculative prices. Flax, linseed, tallow, timber, Spanish wool, silk, hemp, even American cotton, advanced in 1807 and 1808 to prices two or three times those hitherto prevailing. And while one class of imports was thus thrown wholly into the hands of speculative holders, another class, consisting of all colonial produce, underwent an exactly opposite process. The European market was closed to it. Sugar and coffee were selling at Calais for three, four, and five times their price at Dover. And meanwhile the almost omnipotent naval force of Great Britain was contributing, under the Orders in Council, to aggravate this evil, and to pile up still vaster quantities of unsalable goods in British warehouses, by compelling every neutral ship to make for an English port.

A wild spirit of speculation now took possession of the British people. Brazil and the South American colonies of Spain happened at this moment to offer a new market, and merchants flung themselves upon it as though it had no limit. The beach at Rio Janeiro was for a time covered with English merchandise, which there were no warehouses to hold, and which there was no chance of selling. In London, a rage for visionary joint-stock enterprises characterized the years 1807 and 1808. None of the symptoms were wanting which long experience has shown to be invariable precursors of commercial disaster.

The Bank of England, however, still preserved its steady

and conservative routine. The issues were not increased, the price of gold did not vary, the exchanges had not fallen below par, as late as September, 1808. So far as the Bank is concerned, there is no indication that any unusual speculation existed, or that it lent itself or was asked to lend itself to speculative objects. It was not through the Bank that speculators acted. But if we turn to the private and country bankers, and, out of the almost impenetrable obscurity in which this part of the subject is hidden, attempt to gather some evidence of their condition, it will be found, not indeed that their paper was depreciated, — for that it could not be without immediately bankrupting the issuer, — but that their credit had been extended far beyond any moderate limit. It was not merely that the number of country banks had been more than doubled in ten years. What was of greater consequence than this was the change which had gradually crept into their mode of conducting business. Originally their rules of discount had been the same as those of the Bank of England; they accepted only short bills, representing, so far as they could judge, real transactions of business. They gradually began to make advances upon bills of longer date, and then to lend money without security of any kind. Paper which could not be discounted in London was sent down to them by their London agents. Their West Indian bills had from twelve to thirty-six months to run. They made little inquiry as to what might be accommodation paper, and still less as to the speculative transactions of their customers. The reaction which ultimately followed, at the very time when the Bank circulation was greatly increased and increasing, proves the extent to which private credit had been abused.

We have been led into this somewhat tedious account of England's financial situation in 1807 and 1808, by the hope of showing how critical her position was, and how inevitable a collapse of credit had become. Down to this point, however, the subject offers comparatively few difficulties. Beyond it, the whole region has been made a favorite battle-ground for armies of currency theorists. It is only within the last thirty

years that even a fair comprehension of the matters in dispute has been made possible to the public, through the great work of Mr. Thomas Tooke. The opinions first advocated, and the facts first proved by the author of the "History of Prices," have since been accepted by some of the highest authorities in political economy, of whom Mr. John Stuart Mill stands at the head. That they are still hotly contested in England is a fact which only adds to the interest of the inquiry.

It has already been stated, that down to September, 1808, the exchanges remained favorable to England, and the price of gold continued firm. During the first half-year, the average Bank circulation had been £16,950,000. At the end of August, £17,200,000 were in issue. These sums were not excessive. If the small notes, which merely supplied the place of coin withdrawn, are deducted, it appears that the real circulation was but £12,993,000; less than had frequently been in issue before, and considerably less than has always been in issue since. The prices of all commodities, except grain, had already reached their highest point, or reached it within six months afterwards. It was at this time, when no change except ordinary fluctuations had occurred in the currency for seven years, that the exchanges suddenly turned, and the price of gold rose.*

* Bank Circulation.

| Date. | Total. | Notes of £5 and upwards. | Bank Treasure. | Price of Gold. |
|---|---|---|---|---|
| 1797, 28 February | £9,674,780 | £9,674,780 | £1,086,170 | 100 |
| 31 August | 11,114,120 | 10,246,535 | 4,089,620 | 100 |
| 1798, 28 February | 13,095,830 | 11,647,610 | 5,828,940 | 100 |
| 31 August | 12,180,610 | 10,649,550 | 6,546,100 | 100 |
| 1799, 28 February | 12,959,800 | 11,494,150 | 7,563,900 | 100 |
| 31 August | 13,389,490 | 12,047,790 | 7,000,780 | 100 |
| 1800, 28 February | 16,844,470 | 15,372,930 | 6,144,250 | 109 |
| 31 August | 15,047,180 | 13,448,540 | 5,150,450 | 109 |
| 1801, 28 February | 16,213,280 | 13,578,520 | 4,640,120 | 107.85 |
| 31 August | 14,556,110 | 12,143,460 | 4,335,260 | 106.5 |
| 1802, 28 February | 15,186,880 | 12,574,860 | 4,152,950 | 106.2 |
| 31 August | 17,097,630 | 13,848,470 | 3,891,780 | 103 |
| 1803, 28 February | 15,319,930 | 12,350,970 | 3,776,750 | 103 |
| 31 August | 15,983,330 | 12,217,390 | 3,592,500 | 103 |
| 1804, 28 February | 17,077,830 | 12,546,560 | 3,372,140 | 103 |
| 31 August | 17,153,890 | 12,466,790 | 5,879,190 | 103 |

The Continental System had begun to act. The mercantile ventures of the last year proved ruinous; the enormous importations at fabulous prices required to be paid for; the unfortunate military expeditions which Great Britain was now renewing against the Continent demanded the transmission of gold. England was paying money in every direction, and she was selling her goods nowhere. No one watched this process of exhaustion more carefully, or understood its consequences better, than Napoleon himself.

The Bank, following its invariable routine of business, took no notice of the sharp fall in exchanges, or of the heavy drain which rapidly reduced its treasure, and, instead of contracting its issues, allowed them slowly to expand, according to the demand for discount. From £13,000,000 in 1808, the circulation in notes of £5 and upwards rose to £14,325,000 in November, 1809. The exchanges indicated already a difference of about fifteen per cent between paper and gold. Meanwhile the government expenses requiring transmission of gold abroad had increased to above £10,000,000 for the year. The excessive prices of that class of goods which could only be obtained from the Continent stimulated merchants into every possible effort to procure them. Ships' papers were regularly forged as a matter of business; licenses for trading were obtained at great expense from both governments. Importations were by these means greatly increased, and large quantities of grain were brought in to supply an unusual deficiency in the harvest. The receipts of cotton were more than doubled, and the market was again overwhelmed with colonial produce. Thus no opportunity was allowed for a recovery of the exchanges, and the country continued to be drained steadily of its gold.

| Date. | Total. | Notes of £5 and upwards. | Bank Treasure. | Price of Gold. |
|---|---|---|---|---|
| 1805, 28 February | 17,871,170 | 13,011,010 | 5,883,800 | 103 |
| 31 August | 16,388,400 | 11,862,740 | 7,624,500 | 103 |
| 1806, 28 February | 17,730,120 | 13,271,520 | 5,987,190 | 103 |
| 31 August | 21,027,470 | 16,757,930 | 6,215,020 | 103 |
| 1807, 28 February | 16,950,680 | 12,840,790 | 6,142,840 | 103 |
| 31 August | 19,678,360 | 15,432,990 | 6,484,350 | 103 |
| 1808, 28 February | 18,188,860 | 14,093,690 | 7,855,470 | 103 |
| 31 August | 17,111,290 | 12,993,020 | 6,015,940 | 103 |

Throughout the year 1810 the same process was continued. Again the importations were greatly increased, and the quantity of grain brought from abroad was far in excess of what had been imported in any year since 1801. Wellington was now in the lines of Torres Vedras, requiring continual supplies of gold. The military efforts made by England on the Continent were greater than ever before, and the foreign expenditure rose beyond £12,000,000 for the year. The exchanges continued to fall, although at one time there was a tendency to recovery. Gold remained at about the same premium as in 1809, while the government and the public equally increased their demands on the Bank, until in August the circulation of large notes rose to £17,570,000.

If irredeemable government paper had been forced upon the public without regard to its wants, until within a space of two years the currency had swelled from a total of £17,000,000 to one of £24,500,000, it scarcely admits of a doubt that the result would have been a rise in prices and an increase of speculation. According to all the old currency theories, such ought now to have been the case with England. In fact, directly the contrary result took place. During the last months of 1809 and the whole of 1810, a fall of prices and a destruction of private credit occurred, which for severity remains perhaps to this day without a parallel, as it was then without a precedent. Half the traders in the kingdom became bankrupt, or were obliged to compound. Country banks by dozens were swept out of existence. Rich and poor alike were plunged in distress, while the crash extended to the Continent and to America. It was this universal collapse of credit which, by driving the whole trading class for assistance to the Bank, obliged the Bank to increase its issues. Nothing but an absolute refusal of discounts could have prevented suspension, had the Bank at this moment been paying its notes in specie. According to one theory, the withdrawal of so much country-bank paper should have restored gold to par, since it is very improbable that the Bank issues supplied the vacancy. This would no doubt have been the case, if the depreciation had

been, as is usually supposed, the result of over-issue; but in fact the foreign debt of England was enormous; its immediate payment was necessary; gold was the only exportable commodity, and gold was not to be had. Mr. Baring declared in the House of Commons, that, if his firm wished to obtain fifty thousand pounds sterling for transmission abroad, he did not know how such a sum was to be procured even at a premium of fifty per cent. To export more bulky goods was simply impossible. At this time the British merchant was sending sugar by sea to Salonica, and thence on horseback through Servia and Hungary, in order to reach Vienna; one parcel of silk sent from Bergamo to England, by way of Smyrna, was twelve months on its passage; another, sent by way of Archangel, was two years. The British government attempted to establish a smuggling depot at Heligoland, in order to overcome the obstructions caused by the Continental System. A single licensed cargo to a French port cost for freight alone twenty times the cost of the vessel which carried it. Gold alone was comparatively easy to export, and naturally bullion rose in value.

In all this there is clear evidence of a terrible convulsion in commerce, and no doubt of a previous excessive expansion in credit, followed by as excessive contraction; but there is nothing which indicates an excess of currency in the sense which that phrase bears in regard to the effect of forced issues on prices. Undoubtedly there was a depreciation of ten or fifteen per cent, or even more, in paper as compared with gold, and there may justly be a question whether the Bank was not bound to restrict its issues till that difference was removed. But so long as the usury laws remained in force, the Bank could not act upon the exchanges by raising its rate of interest; and to refuse accommodation would have been the ruin of such merchants as had hitherto succeeded in surviving the shock. Even had the Bank resorted to this desperate measure, such was the preponderance of foreign payments over receipts from abroad, that no possible pressure could have immediately restored the balance of exchange. In ordinary times a mone-

tary crisis effects this result by reducing prices and thus making it possible to export goods at a profit; but it is difficult to see how any reduction of prices could have had such an effect in 1810, since for years before that time it had been impossible to obtain in Holland and Hamburg, even at three and four times their English price, the goods which overwhelmed the British market. The only result of Bank contraction, therefore, must have been to stop importations. But in the first place the general fall in prices was alone sufficient to produce this result, as was proved in 1811. And, moreover, grain was at famine rates; the people must be fed; the foreign expenditure of the government also defied laws of political economy, and Wellington's army in Portugal required millions in gold. If, therefore, the Bank had attempted to put a still more severe pressure on the exchanges than already existed, it would have found itself paralyzed by the government at its first step, and in the struggle which must have followed the people would have been ground into the dust. Even under the liberal system adopted, there was a time, in 1811 and 1812, when the general distress shook society to its foundations. Had the Bank wilfully intensified and prolonged this distress, it is not improbable that Napoleon's Continental System might, after all, have proved the greatest success of his life.

The fall in foreign exchange during 1808 and 1809 did not attract very much public attention until Mr. Ricardo published a pamphlet on the subject, — "The High Price of Bullion a Proof of the Depreciation of Bank-Notes." Shortly after the meeting of Parliament in 1810, a committee was appointed, at the instance of Mr. Francis Horner, to investigate the causes of the high price of gold bullion. This was the famous "Bullion Committee," whose Report made so marked an era in currency problems that it might almost be called their *pons asinorum*. Its doctrines, rejected by Parliament in 1811 only to be triumphantly adopted in 1819, acquired through the conversion of Sir Robert Peel an overruling ascendency, and, embodied in the Bank Charter Act of 1844, still hold sway in England, although the more liberal economists have long since protested against the application given to them.

We would willingly linger over the Bullion Report, if it were possible to compress the subject within our limits; but this great controversy does not allow of narrow treatment, and we prefer to lay it aside. It was based upon three propositions: first, that Bank paper was depreciated as compared with gold; secondly, that this depreciation was caused by over-issues; thirdly, that the price of gold and the state of foreign exchange should regulate the issues of paper. And the Report closed by recommending that the Bank should be obliged to resume payments within two years.

Had the government been in the hands of able or dexterous men, Mr. Horner's resolutions, in which the substance of his Report was embodied, need not have been so difficult to deal with as they proved. The first proposition was indeed incontrovertible, and no sensible being could have fallen into the blunder of disputing it. The third was, if not indisputable, at least not necessary to dispute under certain limitations. But the second was very far from evident in the sense which Mr. Horner gave to it, and Mr. Thornton, perhaps the highest authority in the House, appears not to have understood it as absolutely excluding the idea that the depreciation might have been due to a deeper cause; while the concluding practical measure was supported by scarcely any one besides Mr. Horner, its author.

But the government was held by a class of men equally incapable of seeing their own mistakes, and of profiting by those of their opponents. The Ministers began by plunging headlong into the grossest absurdity they could have found. They denied that Bank notes were depreciated at all. Assuming that the sale of coin for more than its nominal value in paper was forbidden by law, they undertook to affirm that the Bank note and the guinea still maintained their relative worth in regard to each other. They denied that bullion was the true standard of value, and they affirmed that it was the stamp and the stamp alone which made the guinea a standard. They denied that the amount of circulation affected the price of gold, or that the Bank issues had anything to do with the

course of exchange. Yet at intervals they were obliged practically to admit the very conclusions which they were so eager to contest, until all their really accurate statements and forcible reasoning became inextricably entangled and hidden from sight in a confused mass of inconsistent arguments.

On the other hand, they had as opponents some of the ablest men whom England has ever produced. It was pitiable to watch the torture of Mr. Vansittart, Mr. Rose, and Lord Castlereagh, in the grasp of Mr. Horner, Mr. Huskisson and Mr. Canning. The mistakes of the bullionists are hidden by the brilliancy of their oratory, the sparkle of their wit, the vigor and solidity of their genius. Sympathy is irresistibly attracted to their side, when it is seen what magnificent powers they were obliged to use, in order to convince an unreasoning majority of the simplest principles in practical business. And yet, after all these efforts, they thought themselves fortunate in being defeated by a vote of only two to one.

It would have been happy for Mr. Vansittart and his associates, had they been willing to rest satisfied with this negative upon the resolutions offered by Mr. Horner. Victorious in defence, they thought it necessary to establish their advantage permanently by a vigorous assertion of what they deemed the true principles of credit and currency. Mr. Vansittart accordingly moved, in his turn, a long series of resolutions.

The third of these has been the chief means of preserving Mr. Vansittart's memory. It was worded as follows : — "*Resolved*, That it is the opinion of this committee that the promissory notes of the Bank of England have hitherto been, and are at this time, held in public estimation to be equivalent to the legal coin of the realm, and generally accepted as such in all pecuniary transactions to which such coin is lawfully applicable."

This position was beyond the reach of argument, but not of ridicule. In the whole range of Parliamentary oratory, there are few examples of sarcasm so happy as that which Mr. Canning poured out upon this unfortunate resolution in his speech of the 13th of May, 1811. But it was all in vain. The House

sustained Mr. Vansittart by a vote of 76 to 24 ; and from that day to this the resolution has stood, an object of laughter and wonder to each succeeding generation.

Thus the Bullion Committee was disposed of, but the subject was further than ever from a satisfactory settlement. Within two months of the passage of this resolution, in which Parliament had gravely pledged the people to believe that Bank notes were equivalent to coin, two events almost simultaneously occurred, which obliged the government to take active measures in order to compel the people to accept these same Bank notes. The first of these difficulties was due to an unexpected interpretation of the law. Two obscure individuals, one a Jew pedler named De Yonge, the other a guard on the Liverpool mail-coach, had been taken in the act of buying guineas at a premium, — an act supposed to be illegal, and, like the exportation of coin, subjecting the delinquent to the penalties of a misdemeanor. Government determined to make an example of these persons, and they were accordingly indicted under an obsolete statute of Edward VI., and, the facts being clearly proved, they were duly found guilty of the acts charged in the indictment. But their counsel raised the point of law, that the act as laid in the indictment and proved in evidence was not an offence in law, inasmuch as the statute of Edward VI. was intended to apply only to the exchange of one sort of coin for another. Judgment was respited until the opinion of the twelve judges in the Court of the Exchequer Chamber could be obtained on this point; but at length, on the 4th of July, 1811, Lord Ellenborough pronounced the unanimous decision of the Court, that the exchange of guineas for bank-notes, such guineas being taken at a higher value than they were current for under the King's proclamation, was not an offence against the statute upon which the indictment was founded. Thus the whole government theory in regard to paper money was at once overthrown.

Almost at the same time with this blow, the famous third resolution was attacked from another side with a vigor far more alarming. It was well understood that the law of 1797

had by no means made Bank paper a legal tender. The case of Grigby *v.* Oakes, in 1801, had established the principle that Bank of England notes might be refused by the creditor, and the debtor must in that case discharge his debt in coin. Practically, however, the Bank note had been received as equivalent to coin, except in some remote districts of Ireland, where the unfortunate peasants were obliged to buy guineas at a premium from the landlord, in order to discharge their rents.

The government policy, however, seemed purposely calculated to challenge attack, and it was perfectly natural that the bullionists, who saw no limit to the possible depreciation, should resort to the last means now left for compelling government to check it. Lord King, a nobleman of high character and strong liberal principles, accordingly issued a circular to such of his tenants as held leases dated before the depreciation began, requiring them in future to pay their rents either in gold or in Bank paper representing the market value of gold. Even the dignity of the House of Lords was almost overthrown by this unexpected attack. A storm of indignation burst on the head of Lord King, whose practical sarcasm was more exasperating to the Ministry than even the satire of Mr. Canning. But Lord King was in his right; he was acting from conscientious motives, and he would not yield. Yet, after the passage of Mr. Vansittart's resolution, this act directly tended to bring Parliament into public contempt. "My Lords," said Lord Grenville, in opening his speech on the subject, "it is painful to me to observe, that I cannot remember in the course of my life to have ever seen the Ministers of this country placed in so disgraceful a situation as that in which they appear this night." Obviously some action had become necessary, and yet Ministers hesitated, in the vague hope that Lord King's example would not be followed. The judges' decision in De Yonge's case, however, turned the scale; but even then, such was the general dislike to a law of legal tender, and such was the difficulty of forcing a contraction in the Bank discounts, that they were placed in a most embarrassing situation. There was apparently a third alternative, — that of allowing Lord

King to proceed; but in fact this would have established two scales of prices throughout the country, and the result would ultimately have been that the Bank, rather than endure the discredit thus attached to its paper, would have preferred to withdraw it wholly.

The Ministers were saved from this dilemma by Lord Stanhope, one of their ordinary opponents. He invented a measure which is certainly one of the curiosities of legislation, — a measure which disposed of Lord King, and established the law for such cases as that of De Yonge, but neither made paper a legal tender, nor contained the trace of a legal principle. The act, which has since been commonly known as Lord Stanhope's, made the purchase or sale of coin for more than its legal value in Bank notes or other lawful money a misdemeanor, as also the reception or payment of notes for less than their nominal value; and it further deprived the creditor of the power of distraining, in case a tender in Bank notes to the amount of the debt had been made.

Strange to say, this preposterous statute completely answered its purpose. The courts seem never to have been called upon to interpret it, nor did any creditor attempt to enforce his rights. The law officers of the crown did not venture to express any opinion upon the bill while on its passage through Parliament. During the ten years that the Restriction Act still remained in force, with this measure of Lord Stanhope's as its supplement, no man in England really knew what the law was as affecting the currency, or the extent to which Bank notes were recognized as the lawful equivalent of coin. In the failure of any judicial declaration on the subject, we can only refer to an opinion expressed in debate by Sir Samuel Romilly. That eminent lawyer pointed out to Parliament, that, if the object of government were to prevent Lord King or any other landlord or creditor from insisting upon payment in coin, the bill was far from answering its purpose. Creditors would still have the right to demand gold, and no court could refuse in such a case to give judgment against the debtor, who was yet apparently debarred by the act from

obtaining gold without incurring the penalties of a misdemeanor. The creditor, having obtained his judgment, need not, and probably would not, proceed by way of distraint upon the goods of his debtor. If a landlord, he would resort to an ejectment. In any case, however, he might proceed against the person, and shut up the debtor in jail indefinitely, or until he made himself liable to further imprisonment by purchasing coin. There appears, however, to have been one means of escape left open to him still. The law only prohibited the trade in coin, not that in bullion. If the debtor, therefore, chose to purchase bullion, and have it coined at the mint, there seems to be no reason why he might not so have evaded the law.

Ministers, however, gave it to be understood that, if creditors pressed their rights to this point, it would become necessary for Parliament to intervene by making Bank notes a legal tender. It is difficult to see precisely what was gained to the country by a resort to these absurd subterfuges, or why a legal-tender act should not have been passed outright, since Lord Stanhope's bill was intended to have, and did in fact produce, the same effect, except that it went much beyond the limits of reasonable legislation, and accomplished its purposes only by creating a new offence hitherto unknown to the law. The plea that it successfully met the emergency is merely an excuse for slovenly legislation.

This act, hurried through Parliament in July, 1811, just at the close of the session, was the sole result of the currency controversy, unless Mr. Vansittart's resolutions are worthy of sharing its credit. From this time it became evident that no interference by government in monetary matters was to be looked for, but that the Bank was to retain that exclusive control which it had hitherto possessed. This result was probably fortunate for the country. The Bank directors, if not great masters of statesmanship, were at least convinced that any arbitrary action of their own would only aggravate the evils of the situation, while, if the foreign and domestic policy of the government in other respects furnishes any idea of the probable result of its interference in Bank affairs, there is no

disaster which it might not have brought upon the credit and resources of the community.

The great financial crash of 1809 and 1810 threw the country into a state of profound distress and depression, but it had the effect of preparing the way for a rapid change at the first sign of military success. The year 1811 marked perhaps the lowest point of England's fortunes; but in the autumn of that year the prospect became brighter. Napoleon had now broken with Russia, and was preparing his great campaign to Moscow, while Wellington had achieved unusual success in Portugal. There was hope that both the Russian and the Spanish ports would soon be reopened, while the colonies and South America were actually consuming again large quantities of British goods. Importations into England had meanwhile fallen to a very low point, and the exchanges were slowly creeping upwards. The pressure upon the Bank for assistance and for discounts fell off as credit recovered itself, until the circulation, which had reached £17,570,000 in August, 1810, contracted itself to £15,365,000 in August, 1812, the small notes excluded.

What was only hope in 1811 became certainty in 1812. Napoleon was driven both from Russia and from Spain. In another year all Europe was again open to British commerce, and in April, 1814, peace was restored. During this period, many of the dangerous symptoms of 1807 and 1808 again made their appearance; the circulation had become much smaller, but nevertheless prices rose; speculation was as general, if not so desperate, as in 1808; the Continent was flooded with English goods, while in England itself the price of wheat had risen, in 1812, to nearly 160 shillings the quarter.

But although the circulation was diminished by £2,000,000. although public confidence was so far restored that prices gen erally rose, although the exchanges became considerably more favorable, still gold showed no sign of falling in value. The premium had risen to forty-two per cent in September, 1812, and after various fluctuations it was again forty-two per cent in the autumn of 1813. Then at last the fall began, and for

a twelvemonth gold continued to decline steadily, until, at the close of 1814, the premium was less than twelve per cent. And it should be remarked that the rise in value of Bank paper was coincident with another very large extension of issues, which now reached £18,700,000.

This extension was due partly to government, but partly, as in 1810, to the private demand. The whole fabric which speculators had raised for themselves on the apparently solid basis of supposed European necessities had crumbled to pieces at the first shock. Europe was too poor to buy or too thoroughly plundered to pay for English merchandise. The speculations abroad failed at the very time when a prodigious fall in the price of grain ruined the English farmers and the country bankers, who depended upon agricultural prosperity. The collapse was general and disastrous; England was again plunged into distress at the very time when her success was most brilliant; for two years after 1814, trade stagnated and merchants became bankrupt, without the slightest reference to the price of gold or the amount of circulation; nor is there any reason to suppose that the Bank could have prevented, or even shortened, the distress by any action upon the currency.

However devoted might be the adherence of theorists to their own favorite currency dogma, the most ardent follower of Mr. Horner could scarcely have regretted that the principles of the bullion report had not been made obligatory as a rule of action for the Bank during the year 1815. The evils of inconvertible paper are no doubt many, but there are also advantages in the system during times of political trouble; and it is impossible to deny that the violent convulsions of 1815 would have proved too severe a trial for any but the most elastic form of credit. During January and February, gold had stood at about 115, as compared with paper. The Emperor returned from Elba and arrived in Paris on the 20th of March. The next quotation of gold is on the 4th of April, when at one leap it rose to 137, almost as high a point as it had reached during the war. The exchanges went down with almost equal violence; but the Bank circulation remained

absolutely stationary. After the first panic was over, gold began again to fall slowly, and on the news of Waterloo it declined to 128; on the 1st of September it resumed the position it had held in January; but instead of resting there, it continued to fall, until at the close of the year the premium was only five per cent; and in July, 1816, it was nothing at all, or at most only about one per cent. The Bank circulation meanwhile expanded or contracted itself according to the demand, averaging rather more than £17,500,000, exclusive of the small notes.*

The equilibrium was therefore restored, and it was restored without interference by government. The system vindicated itself, and is justly entitled to the high credit that properly belongs to so brilliant a success. But, unfortunately, this very success has given occasion for another hot dispute among currency writers, involving the whole question in its historical as well as in its theoretical bearings; and tedious as the subject may be, we are obliged again to turn aside, and to examine the opposing theories so obstinately and positively advanced.

It is almost needless to repeat that there were in 1816, and that there still are, two classes of political economists, so far as the currency is concerned. The one has found in bank paper and its over-issues an explanation for every rise or fall

* Bank Circulation.

| Date. | Total. | Notes of £5 and upwards. | Bank Treasure. | Price of Gold. |
|---|---|---|---|---|
| 1809, 28 February | £18,542,860 | £14,241,360 | £4,488,700 | 115.5 |
| 31 August | 19,574,180 | 14,393,110 | 3,652,480 | 115 |
| 1810, 28 February | 21,019,600 | 15,159,180 | 3,501,410 | 115 |
| 31 August | 24,793,990 | 17,570,780 | 3,191,850 | 115 |
| 1811, 28 February | 23,360,220 | 16,246,130 | 3,350,940 | 118.75 |
| 31 August | 23,286,850 | 15,692,490 | 3,243,300 | 125 |
| 1812, 29 February | 23,408,320 | 15,951,290 | 2,983,190 | 122 |
| 31 August | 23,026,880 | 15,385,470 | 3,099,270 | 128.5 |
| 1813, 27 February | 23,210,930 | 15,497,320 | 2,884,500 | 130 |
| 31 August | 24,828,120 | 16,790,980 | 2,712,270 | 142 |
| 1814, 28 February | 24,801,080 | 16,455,540 | 2,204,430 | 140 |
| 31 August | 28,368,290 | 18,703,210 | 2,097,680 | 115.5 |
| 1815, 28 February | 27,261,650 | 18,226,400 | 2,036,910 | 115 |
| 31 August | 27,248,670 | 17,766,140 | 3,409,040 | 115 |

in prices, and for every financial disaster. The other has denied to such a medium of exchange any influence whatever upon prices, and insists that, if every bank-note were destroyed, speculation and abuses of credit would flourish not less than now. The bullionists of 1810 and their successors were strong in the belief that the Bank issues did control prices, and the price of gold especially. They were, therefore, obliged to explain how it happened that gold fell to par, or about forty per cent, while the Bank issues were actually increased. Obviously the dilemma was serious.

The bullionists, however, had a reply, and a very reasonable one; we quote it as given by Mr. McCulloch, whose opinion is always entitled to weight. Mr. McCulloch's theory is, that, although no contraction of Bank issues occurred which could explain the fall in gold, yet there was such a contraction in the entire circulation, taking the country banks into the calculation; and that the rise in value of Bank of England paper was in fact due to the destruction of country bank-notes during the disastrous years of 1814, 1815, and 1816. And if the inquiry be carried a step further by seeking the cause of these disasters themselves, Mr. McCulloch explains that the fall of grain from 155 shillings the quarter, in 1812, to 67 shillings, in 1814, had spread universal ruin among the agricultural class.

We are far from affirming positively that so natural and so obvious an explanation as this is not the correct one; yet we are obliged to confess that the view taken by Mr. Tooke and Mr. Fullarton appears to our eyes more philosophical and more exact than that of Mr. McCulloch. They maintained that the fall in gold was due simply to the fact that, with the final turn of exchange in favor of England, gold ceased to be an object of demand, and, like other commodities in the same position, rapidly fell to its ordinary value.

Mr. McCulloch's facts are unquestioned, but they appear to be only a part of the truth. The prodigious decline in the price of grain was coincident with a very general decline in prices, which naturally checked importations and stimulated

export. The grain alone which was imported in 1814 is estimated at £2,800,000 in value: in 1815 it was but £800,000, and in 1816 only £940,000. Silk and wool, coffee, flax, linseed, and most of the great staples of import, fell off in the same way between 1814 and 1816. Under any circumstances the exchanges must have risen without regard to the currency, and gold must have fallen, since considerable sums were actually brought from abroad during 1815 and 1816.

The force of this argument becomes evident by comparisen with previous cases. If the rise in exchange and the appreciation of paper in 1815 and 1816 were caused by the withdrawal of private bank-notes, the same reason should hold good for the similar events in 1814. If at the later time the currency were so depreciated from excess as to regain its value only by contraction, it was certainly more in need of that relief at the earlier. Yet a fall of thirty per cent in gold was then coincident with an increase of paper throughout the country.

Allowing, however, that Mr. McCulloch is right, and that the restoration of paper was caused by involuntary contraction, that contraction was at all events only temporary, and the reestablishment of the credit of the country banks of issue should have renewed the depreciation. The Bank issues rose in 1817 and 1818 to a higher point than ever before, and the country banks had again extended their credit in every direction. Under these circumstances, the depreciation should have been very great, even after every reasonable allowance had been made; yet in fact gold was at a premium of only about five per cent, and this slight advance appears to have been caused merely by a temporary pressure on the foreign exchanges which will presently be explained.

If these arguments seem still insufficient to show that the theory of excessive issues does not fully meet the difficulties of the case, we can only compare the circulation of 1814 and 1815, which is said to have lost twenty per cent or more of its value through its excess, with that which existed after specie payments were resumed. Such comparisons are not a fair

proof of either excess or deficiency, since the public demand varies, and the same amount of circulation is at one time less and at another more than is required. Allowing for such variations, we may still venture to compare the three different periods of general expansion between 1813 and 1825. The small notes having been withdrawn at the resumption, and their place supplied by coin, it is necessary to exclude these in each case.

The highest point reached by the Bank circulation in any quarterly average between 1812 and 1815 was £ 19,067,000 in the third quarter of 1814; the price of gold being about 112. Between 1816 and 1822, the highest average was in the second quarter of 1817, or £ 21,517,000, and it remained above £ 20,000,000 until July, 1818, the country banks expanding generally. Gold was then at about 105. Between 1823 and the close of 1825, the highest average was in the first quarter of 1825, a time of universal expansion, when it reached £ 20,665,000, the Bank redeeming its notes in coin.

If, then, two thirds or three fourths of the whole depreciation was removed in 1814 without any withdrawal of paper; if the circulation was restored to its widest range in 1818 without any effect of consequence upon the price of gold; and if, after the resumption, the circulation remained undiminished in amount, and its issue subject to the same general laws as before, — there seems to be no necessity for resorting to the theory of involuntary contraction in order to explain the fall of gold in 1816. There is no reason to dispute that theory, if it is understood to mean merely that this contraction was itself a part of a general movement of trade and credit, and as such that it contributed to hasten the result. But if more than this is intended, it appears to us that the effect produced was entirely out of proportion to the cause assigned.

The whole subject of private banking, for many years assigned as the source of all financial troubles, has in fact very little to do with the question of depreciation during the French wars. The country banks held then precisely the same position they had held before suspension, nor did the

resumption change it. They never suspended payments. At any time gold might have been demanded for their notes. At all times they did in fact redeem their notes on demand, by exchanging them for those of the Bank of England. Their circulation, therefore, was limited by that of the Bank, and the same general laws controlled the whole.

Country bank paper could not have been in excess of the public wants then, any more than it could now be, although the credit of such banks might be, and no doubt was, abused then, as it may be now. On the other hand, the Bank of England was not obliged to redeem its notes. There is no doubt that, through the channel of permanent loans to government, it might have forced any given amount of paper into circulation, had it chosen to do so. But it did not force a single note upon the public. It lent notes, but never paid them away. At the end of two months every such loan had to be paid back into the coffers of the Bank by the borrower; and although the advances to government were to some degree permanent, in the first place they were not excessive, and in the second place, as has been already shown, they tended directly to lower the private demand. Whatever action may have been caused by the Restriction was upon credit in the first place, and not upon currency. The encouragement it may have afforded to speculation could not, however, have been very great, or ten years would not have passed without showing it. But when taxes, bad seasons, or the operations of war, or other causes, combined to raise prices and to stimulate speculation, the credit system was not then, nor is it now, adapted to check the rise. And when a stagnation in business and a fall in prices followed, as was sure ultimately to be the case, the circulation contracted as a necessary consequence. But in every instance, before the resumption and since, the rise in prices has preceded the expansion, and the fall has preceded the contraction.

In the early part of 1817 the supply of bullion in the Bank had risen to £10,000,000, the average total circulation for the quarter being somewhat in excess of £27,000,000, while

the exchanges were considerably above par. The directors, therefore, considered it safe to try the experiment of partial resumption, and by a series of steps taken during this year they undertook to redeem all notes dated previous to the 1st of January. This was, in fact, resumption. During the next two years any holder of Bank notes could obtain gold for them at the Bank, either directly, or by exchanging them for such as were dated previous to the 1st of January, 1817. There is no reason to doubt that, had the exchanges remained firm, there would have been no further question as to an easy and regular return to the normal condition of the currency.

But, unfortunately, the year 1817 was one of renewed speculation, and the imports again rose to an extravagant point. Grain alone to the value of £17,300,000 was brought into England in the two years 1817 and 1818. Another cause which could not well have been foreseen tended powerfully to depress the exchanges and to carry gold abroad. Nearly all the governments of Europe were at this time borrowing large sums of money, and the English capitalists negotiated several of their largest loans. How much money was sent abroad for this purpose it is not easy to say, but certainly not less than £10,000,000. The effect upon exchange was immediate, yet the extreme variation in gold was not more than five per cent, although no effort of any kind was made to counteract the pressure. So far from resorting to the theory of excessive issues for an explanation of this temporary rise in gold, one may well feel surprise that, under the circumstances, there was not a much greater disturbance of the market. The return of peace must have largely increased English resources, to enable them to bear so easily the pressure of enormous foreign payments.

But even the slight variation of five per cent which did exist was not of long duration. Again in 1819, as before in 1816 and in 1814, the system vindicated itself without artificial pressure, by the mechanical operation of its own laws. The excessive importations of 1817 and 1818 resulted in stagnation of business and decline in prices. The foreign loans

were discharged. The exchanges, relieved from pressure, rose. The demand for gold ceased, and in July, 1819, the Bank note was again at par. There it remained thenceforward, and from that day to this there has been no depreciation in the value of Bank of England paper.*

In the mean while, however, Parliament had taken alarm. The Bank directors, after paying out £ 4,000,000 in redemption of their notes under the conditions specified in 1817, seeing no immediate prospect of a rise in exchange, and fearful of the entire exhaustion of their treasure, applied to Parliament early in 1819 to be relieved from the further performance of their own promises of redemption. Committees were appointed by both Houses, whose first act was to renew the Restriction in its whole extent. Then, with a view to the final establishment of a fixed government policy in regard to resumption, the two committees entered into a separate and most extended investigation of the whole subject, resulting in two reports made in the course of April and May, which, with the accompanying evidence, fill an enormous volume, and still furnish a mass of readable matter not less interesting than bulky. We are obliged to omit any detailed examination of

* Bank Circulation.

| Date. | Total. | Notes of £5 and upwards. | Bank Treasure. | Price of Gold. |
|---|---|---|---|---|
| 1816, 29 February | £27,013,620 | £18,012,220 | £4,640,880 | 105 |
| 31 August | 26,758,720 | 17,661,510 | 7,562,780 | 101.5 |
| 1817, 28 February | 27,397,900 | 19,261,630 | 9,680,970 | 100.8 |
| 30 August | 29,543,780 | 21,550,630 | 11,668,260 | 103 |
| 1818, 28 February | 27,770,970 | 20,370,290 | 10,055,460 | 104.5 |
| 31 August | 26,202,150 | 18,676,220 | 6,363,160 | 104.5 |
| 1819, 27 February | 25,126,700 | 17,772,470 | 4,184,620 | 104 |
| 31 August | 25,252,690 | 18,017,450 | 3,595,360 | 100 |
| 1820, 29 February | 23,484,110 | 16,794,980 | 4,911,050 | 100 |
| 31 August | 24,299,340 | 17,600,730 | 8,211,080 | 100 |
| 1821, 28 February | 23,884,920 | 17,447,360 | 11,869,900 | 100 |
| 31 August | 20,295,300 | 17,747,070 | 11,233,590 | 100 |
| 1822, 28 February | 18,665,350 | 17,290,500 | 11,057,150 | 100 |
| 31 August | 17,464,790 | 16,609,460 | 10,097,960 | 100 |

Average Circulation of Bank Notes of £ 5 and upwards for the years

| 1823. | 1824. | 1825. |
|---|---|---|
| £18,033,635 | £19,927,120 | £19,679,120 |

these papers, and of the Parliamentary debates that followed them; but it is impossible to close this history without some slight analysis of the measures finally adopted.

Mr. Peel, afterwards the celebrated Prime Minister, was chairman of the House committee. Hitherto an opponent of the bullionists, his opinions were changed by the testimony offered before his committee, and he became a convert to the doctrines which Mr. Horner and his friends had so ably advocated in 1810. He carried almost his whole party with him. It was now generally acknowledged in Parliament that Bank paper was depreciated in regard to gold, and that a forcible contraction would restore the equilibrium. This principle, therefore, lay at the basis of his report.

The most serious resistance to resumption now came, however, from a new party, which made an alarming use of this doctrine of depreciation. It was affirmed, and probably with truth, that the trifling difference between paper and gold was no measure of the actual depreciation in paper as compared with commodities generally. The rise in prices during the war had been, it was argued, as much as fifty or one hundred per cent upon the old scale. A return to the original standard would be a flagrant injustice to the community. The fund-holders alone would be benefited by it, and the people would be ground down by additional taxes solely in order to pamper the wealthy capitalist. If Parliament were determined to restore specie payments, it should at least create a new standard, and reduce the value of sterling money by twenty-five per cent; or it should accompany the resumption by allowing an equivalent deduction to every debtor on the amount of his debt. In other words, a general repudiation to the extent of twenty-five per cent was demanded by a party which contained some leading and influential members of Parliament not in any way inclined to act the part of demagogues.

The House of Commons was, however, faithful to one main principle, in which it justly considered the national honor to be involved. The Restriction had been a war measure merely. Since peace had been restored, Parliament, while consenting

to renew the law from year to year, had repeatedly pledged itself to ultimate resumption. Every government loan had been raised on the faith of these pledges; the interest of the national debt had been paid in paper, on the ground of its equivalence to gold; every public or private debt since 1797 had been contracted under the influence of acts of Parliament prescribing the time of resumption; every Bank note bore a promise to pay upon its face. Four years had already been allowed to pass, and nothing had yet been done. It was felt that any further concession either to public timidity or to class interests would endanger the national credit, if indeed it did not proclaim a criminal dishonesty in those to whom the duties of legislation were intrusted.

All resistance, therefore, to the principle of resumption in its purest and simplest form was summarily swept aside. Yet it is curious to observe with what excessive caution Mr. Peel proceeded, and how clumsy and ponderous an engine he thought it necessary to invent in order to bring about a very simple result. At the time when his committee was sitting, there was a premium of about five per cent upon gold, and his object was to restore fully the equilibrium between paper and coin in the first place, and in the second to create a system under which it should be impossible for paper to fall again below par. The latter purpose could, as he believed, be effected by establishing the principle that the circulation should be forcibly contracted as the exchanges became unfavorable, or, in other words, that the Bank should diminish its issues whenever its treasure was diminished. But as the Bank directors were obstinate in denying the efficacy of this contrivance, Mr. Peel undertook to frame his bill in such a manner as to leave them no option but to follow out his theory.

The project, therefore, began by an order for the repayment by the government of ten millions out of the twenty-three millions advanced to it by the Bank. This repayment was not made, however, for the purpose of necessarily contracting the Bank loans or issues, but because the Bank could more easily control its circulation when made in short private loans, than

when made in more permanent advances to government, and would, therefore, be more able to act energetically should a fall in the exchanges threaten the success of the plan.

Having thus removed one possible impediment, Mr. Peel's next step was to move the following resolution : " That from the 1st of February, 1820, the Bank shall be liable to deliver on demand gold of standard fineness, having been assayed and stamped at his Majesty's mint, a quantity of not less than sixty ounces being required in exchange for such an amount of notes by the Bank as shall be equal to the value of the gold so required, at the rate of £4 1*s.* per ounce " ; that is to say, any person presenting Bank notes to the amount of £243 at the Bank counter should receive in return a bar of gold worth £233. After the 1st of October he was to pay only £238 for the same quantity of gold, and after the 1st of May, 1821, the ingot of sixty ounces was to be purchasable at its par value in notes. After this experiment had been fully tried during a space of two years, the Bank was, on the 1st of May, 1823, to commence the redemption of its notes in coin.

Such was the famous bill of Mr. Peel, which excited the warmest controversies during a whole generation. So far as its ultimate purpose of effecting an unconditional return to specie payments is concerned, it deserves all praise ; but we cannot think that the merits of Mr. Peel's bill, as a practical measure, were very great, or that, apart from its general tendency, it either did or could exercise any great influence on the result. A simple resolution requiring the Bank to resume on a certain day would have answered the purpose better.

In the first place, the elaborate mechanism by which the price of gold was to be forced down was based upon an official acknowledgment of depreciation, the Bank note being made the legal equivalent of a smaller sum in gold than that named upon its face. It is true that no actual coin was to pass, but the gold ingots were as much coin as if they had been guineas. To reverse the whole policy of the war, and at this late moment to proclaim that the government had for years steadily cheated its creditors by paying them in depreciated paper, was unnecessary, and, as we believe, wrong in principle.

In the second place, the radical difficulty with Peel's bill was, that if its provisions had been tested, — had the event occurred which they were designed to provide for, — they would probably have proved useless. We have no space to enter on the wide controversy still raging in England on this point as connected with Sir Robert Peel's Bank Charter Act of 1844; but there are few admirers of that act who can deny that the theory of regulating the currency by the movements of exchange does not and cannot exclude very violent fluctuations in credit, — in fact, that it for the time aggravates them. Had the exchanges, therefore, become unfavorable in 1820, as they did in 1825, no amount of contraction could have saved the specie of the Bank. If, therefore, in the face of such a drain, the Bank had undertaken to increase it by selling gold two per cent cheaper than before, as Peel's act required, there is every reason to believe that it would have again broken down.

As Mr. Ricardo pointed out to Parliament, its duty was to establish the principle, but it was for the Bank to carry that principle out in action. Mr. Peel's act was not merely for the resumption of specie payments; it was also one for the regulation of commerce and credit; it undertook to control both the currency and the exchanges. Such efforts have hitherto always failed, and we can see no reason for supposing that this one would have been more successful than the rest. The really valuable part of the bill was that which fixed a day for the resumption, and that which repealed the penal statutes against melting or exporting coin. Had all the rest been omitted, the measure would have been greatly improved.

Whatever may have been the theoretical merits or demerits of the scheme, in actual practice it was wholly inoperative. Within a few months of its adoption, and without any operation upon the currency, gold again fell to par, and there it has since remained. The Bank prepared its bars of bullion, but no one would have them. On the contrary, large amounts of gold were brought into its vaults. Weary of prolonging an obviously useless delay, the directors applied to Parliament early

in 1821, and procured the passage of a new act, under which cash payments were at length entirely resumed on the 1st of May of that year. The public was unconscious of the event. The Bank system was not altered, nor was the circulation diminished, except so far as sovereigns were substituted for notes of one and two pounds; and after twenty-four years of an irredeemable paper currency, Great Britain returned smoothly and easily to its ancient standard, and redeemed its pledged honor.

There was, however, between the years 1818 and 1822, a general and severe fall in prices, which was then, and is still, commonly referred to the action of Mr. Peel's bill. There may be a certain degree of truth in this theory, since the certainty of resumption would very possibly inspire for the time a salutary cautiousness in the extension of general credit. But in truth there were other causes which tended much more strongly to produce the same result. The agricultural class, which uttered the loudest complaints, had, under the influence of an excessive stimulus, brought more land under cultivation than was required by the public wants, and a long time passed before a proper equilibrium was again established. The shipping interest was in much the same condition. But the population at large did not suffer. On the contrary, it does not admit of doubt that the condition of the mass of Englishmen steadily improved after 1817. At the very time when prices were falling, the manufacturing interests were rapidly extending and enriching themselves; we hear less and less of political discontent and internal disorder, as reviving prosperity brought with it social repose, while even among the bankers and traders there were far fewer bankruptcies during the three years ending in 1821 than in any similar period since 1809. If the resumption was to be held responsible for the misfortunes of certain branches of industry, common justice requires that the general prosperity of others should outweigh the complaint; but if the views which we have taken are correct, both complaint and praise were equally thrown away, and the system after resumption was identical with that which had

existed before. The only effect of the long suspension was to breed a race of economists who attributed an entirely undue degree of power to mere currency, and who for years to come delayed a larger and more philosophical study of the subject, by their futile experiments upon paper money.

We will not undertake to apply England's experience to other cases of depreciation, though no richer field could be wished. But we reiterate, in concluding this review, that a wide distinction must be drawn between inconvertible bank-notes, issued on good security merely as loans, payable within a short definite period, and inconvertible government paper, issued like so much gold or silver, yet not capable of being melted like the precious metals into an article of commerce, nor of being returned to the issuer and not again borrowed, like bank-notes. In one case the public regulates the supply by its own wants; in the other, it is compelled to regulate prices by the supply. No country laboring under the latter difficulty can draw consolation from England's example. But if, in addition to the £ 60,000,000 which we will suppose to have circulated in British paper during the last ten years of Restriction, there had been another £ 60,000,000 of government currency forced upon the public, and if the private banks of issue had been under a less rigorous central control, in this case there might indeed be some parallel between the difficulties of resumption in 1821 and those under which other nations have been weighed down. But in this case, too, we may freely venture to disbelieve that the return to cash payments on the old system would have been so easily brought about; and if England had, after all, succeeded in ultimately restoring her credit, if she had redeemed her pledges and vindicated her honor, she would have accomplished more than any nation has yet done, although many have been placed in a similar situation.

# BRITISH FINANCE IN 1816.*

LORD LIVERPOOL'S administration, at the close of the great French war, contained perhaps not a single member endowed with less originating power than Mr. Vansittart, the Chancellor of the Exchequer. The twenty-three years during which that struggle had raged almost without intermission had seen many men in succession attempting, after their own fashion, to sustain the enormous and rapidly increasing burden under which the resources of England were strained to exhaustion. Mr. Pitt, who, in spite of all that may be said, was great as a finance minister, even in his errors, Mr. Addington, Lord Henry Petty, and Mr. Spencer Perceval had, one after another, tried their ingenuity, not in restoring order to the finances, for they all found any such purpose far beyond their powers, but in holding England back from the brink of national bankruptcy. When, in 1812, Mr. Perceval was assassinated, and Lord Liverpool became the First Lord of the Treasury, it was not supposed that so weak an administration could long sustain the weight of the public interests; and Mr. Vansittart seems to have been placed at the head of the Exchequer rather in the expectation that the position would not be permanent, than with any idea that he might become the most important member of the government. Nominally, indeed, the financial policy of the country was under the control of the Prime Minister, and the whole administration was responsible for its direction. But Lord Liverpool was himself not a

* From the North American Review for April, 1867.

great man, and Lord Castlereagh, whose ability was really considerable, gave, as could scarcely have been otherwise, his whole attention to his own department of foreign affairs. Nevertheless, weak as it was in 1812, this administration brought the war to its conclusion, placing Great Britain in a position more powerful and commanding than she ever had held before, or probably will ever hold again. But the close of this long struggle, and the settlement at last effected by the treaty of Vienna, changed with great rapidity the task of the English government. Questions of internal policy sprang into surpassing interest and prominence; and while Lord Liverpool and Lord Castlereagh were still occupied in maintaining British influence on the Continent at the same point to which they had raised it in 1815, the movement had already begun among the people, which, fifty years later, ended in the official avowal of the uselessness and mischief of the traditional foreign policy of Great Britain.

Mr. Vansittart was not a person of so much consequence that it has been thought worth while to publish his papers; and we cannot now learn whether he was in any way conscious of the enormous duties which the close of the war threw upon him, — duties which would have overtasked Pitt himself, and which Huskisson and Peel made the foundation of their great reputations, while a host of inferior men were buried under the weight. Even now it is impossible to draw up a clear statement of the condition of English finances in 1816. It is impossible to determine with certainty even the simplest of all the facts, — the amount of the debt. If, therefore, the following account of English financial affairs appears unintelligible to the reader, there is only one consideration to be offered in its excuse. This account is difficult to understand, and may contain errors; but there can be no possible doubt that a clear and positive statement would be quite unworthy of belief.

The Parliamentary Paper No. 443 of the session of 1858 gives an official return of the amount of the public debt of the United Kingdom for every year since that debt has had an existence. There is excellent reason to doubt whether the

sums given are in the majority of cases more than approximations to the truth; but there seems to be no reason to expect greater exactness from any other source. The following may, therefore, be assumed as a fair statement of the national debt of Great Britain in 1816, the first year after the return of peace.

| | Great Britain. | Ireland. | Total. |
|---|---|---|---|
| *Funded Debt.* | £ | £ | £ |
| Bank of England, at 3% | 11,686,800 | | 11,686,800 |
| Bank of Ireland, at 5% | | 2,169,231 | 2,169,231 |
| South Sea Company, at 3% | 14,814,085 | | 14,814,085 |
| Five per cent Annuities | 136,181,688 | 10,579,485 | 146,761,173 |
| Four per cent Annuities | 74,935,719 | 789,785 | 75,725,504 |
| Three and half per cents | | 10,740,014 | 10,740,014 |
| Three per cent Reduced Annuities | 164,701,456 | | 164,701,456 |
| Three per cent Consolidated Annuities | 382,447,774 | | 382,447,774 |
| Three per cent Consolidated Annuities (Germany) | 5,731,192 | | 5,731,192 |
| Three per cent Consolidated Annuities (Portugal) | 534,712 | | 534,712 |
| Bank Annuities (1726), at 3% | 1,000,000 | | 1,000,000 |
| Total | 792,033,426 | 24,278,515 | 816,311,941 |
| *Unfunded Debt.* | | | |
| Exchequer Bills | 41,441,900 | | 41,441,900 |
| Treasury Bills (Ireland) | | 2,497,808 | 2,497,808 |
| Debentures | 787,400 | | 787,400 |
| Total | 42,229,300 | 2,497,808 | 44,727,108 |
| Grand Total | 834,262,726 | 26,776,323 | 861,039,049 |

The nominal capital was, therefore, about eight hundred and sixty million pounds; and in January, 1816, six months after Waterloo, the three per cents stood at sixty in the market. It must, however, be stated at the outset, and always borne in mind, that the funded debt of Great Britain cannot be rightly represented by a statement of the nominal amount of capital supposed to be involved. One nation borrows money, and, by the terms of the contract, engages to repay the whole sum lent, and fixes a time for the repayment. Another nation borrows without the profession of any intention ever to return the capital at all; and Great Britain's whole funded debt was contracted in this manner. In technical language, the govern-

ment sells annuities, and no purchaser is either in law or in equity entitled to demand more than his stipulated annual interest upon the sum which he has lent. No man can ever claim of right any part of the principal of the public funds. It is true, however, that there are two sorts of annuities, which must be clearly distinguished. The perpetual annuities, to which class the mass of the funds belong, are also called redeemable, because, whenever they rise above par in the market, and it becomes profitable to pay them off by borrowing the money at a lower rate of interest, there is nothing in the contract which forbids the operation; and accordingly this has been regularly done, until the whole debt is now consolidated in three per cents, and may at any time be reduced still lower, should these rise above par. But the terminable annuities are not redeemable, and depend on an entirely different principle.

These terminable annuities are of two kinds, — those for lives and those for a term of years. They bear a higher rate of interest, calculated according to special tables, so that the life annuities terminate absolutely with the life of the holder, and the others at some fixed time, according to the specified terms of the contract. The so-called long annuities, for instance, were fixed to terminate in 1860. This system of terminable annuities has, therefore, the advantage of securing the extinction of the loan at a very moderate annual charge, so that the tax-payers are unconscious that they are in fact paying off every year a portion of the capital, as well as the interest of the debt. This was at one time a favorite scheme in English finance, and there were several forms of terminable annuities, the principle of the self-extinguishing character of the debt remaining the same throughout. Although this plan of borrowing is accompanied by a higher rate of annual charge than is necessary when borrowing on a perpetual annuity, it was usually made very light by granting the annuity for a long term of years. Thus, an annuity for a hundred years is the same thing to most persons as an annuity forever; and it is also nearly the same by calculation, its value at four per cent being twenty-four and a half years' purchase, and therefore

only a half-year's purchase less than an annuity forever. It has been contended that the whole debt ought to have been contracted in this form, and possibly, if the government had begun with this purpose in its mind, it might have succeeded; but in practice the public naturally prefer, where the choice is given them, the perpetual investment. These terminable annuities were also objected to, reasonably or not, on the ground that they encouraged the popular tendency to improvidence.

The unfunded debt, too, is not fairly represented as capital. Exchequer bills were habitually used to some extent, in anticipation of revenue that could not be immediately collected. Far the larger portion, however, was really so much debt, which had to be ultimately paid off or funded. Large sums were usually voted upon these bills towards the conclusion of each session of Parliament, particularly in time of war, to answer exigencies of the public service.

It is, therefore, the charge of the debt alone which is the true measure of the liabilities of Great Britain. The same authority which has been already quoted states this charge to have been, in 1816, as follows: —

| | Great Britain. | Ireland. | Total. |
|---|---|---|---|
| *Funded Debt.* | £ | £ | £ |
| Interest on Capital | 27,233,994 | 1,044,928 | 28,278,922 |
| Long Annuities | 1,359,436 | | 1,359,436 |
| Short Annuities | 230,000 | | 230,000 |
| Life Annuities | 199,845 | | 199,845 |
| Bank Annuity | | 16,731 | 16,731 |
| Exchequer Annuities | 43,677 | 44,924 | 88,601 |
| Total | 1,832,958 | 61,655 | 1,894,613 |
| Interest of Stock for Redemption of Land Tax | 3,815 | | 3,815 |
| Management | 284,674 | | 284,674 |
| Total | 29,355,441 | 1,106,583 | 30,462,024 |
| *Unfunded Debt.* | | | |
| Exchequer Bills (Interest) | 1,971,699 | 124,890 | 2,096,589 |
| Debentures (Interest) | 39,370 | | 39,370 |
| Exchequer Bills issued in anticipation of Taxes (Interest) | 47,635 | | 47,635 |
| Total | 2,058,704 | 124,890 | 2,183,594 |
| Grand Total | 31,414,145 | 1,231,473 | 32,645,618 |

We may begin, therefore, with the assumption, that the capital of the national debt amounted, in 1816, to the sum of £861,040,000, bearing an annual burden of £32,645,618.

The regular annual expenses of the government amounted to nearly the same sum as the charge of the debt. The whole amount required to be raised by taxation, in the year subsequent to the war, was about £61,000,000. Many years afterwards, when the popular cry for economy had exercised its full power, and circumstances had allowed a considerable reduction to be effected in the charge for interest of the debt, the annual expenditure of the country sank so low as £47,000,000; but the first peace budget was one of more than sixty millions sterling.

This immense burden was levied on a population which probably did not exceed twenty million souls; and of this number fully six millions were Irish. But Ireland was bankrupt. So bad was her financial condition, that, after every effort, she found herself unable to meet by taxation even the charge of her debt. That charge amounted, in 1815, to £6,370,000; while the net revenue paid into the Irish exchequer was little more than £5,000,000. It was not to Ireland that the people of Great Britain could look for the faintest assistance in the support of their common credit.

There remained a population of fourteen millions in England, Scotland, and Wales, and of this number it is hardly rash to say that one half contributed little to the payment of taxes. The warehouses were choked with goods, for which no market was to be found. The price of grain had fallen from five and six pounds sterling the quarter down to two pounds and a half, bringing distress to every farmer in the kingdom. More than £6,000,000 were annually raised, by local taxation, for the support or relief of the poor in England and Wales alone. Under these circumstances, it seems a liberal allowance to suppose that the whole weight of an annual taxation of £60,000,000 fell practically upon not more than ten millions of people; and from these, in 1815, the government had actually succeeded in grinding £72,000,000. But even allowing that the whole

fourteen millions contributed in just proportion, the burden of taxation is terrible to consider, when the vast mass of poverty and pauperism is taken into the account.

The income returns of Great Britain for the year 1815 give the following result: —

| | |
|---|---|
| Customs | £10,487,522 |
| Excise | 26,562,432 |
| Property Tax | 14,318,572 |
| Assessed Taxes | 6,214,987 |
| Land Tax | 1,079,993 |
| Stamps | 5,865,413 |
| Post-Office | 1,548,000 |
| Miscellaneous | 366,867 |
| Total | £66,443,786 |

To this total, about £5,000,000 is to be added on account of Ireland, which still had an exchequer, and even a currency, distinct from that of Great Britain. It must also be mentioned, that the distinction between customs and excise was merely nominal, and did not indicate the nature of the taxes. The transfers from one to the other head seem to have been arbitrary; and, as the same article frequently paid both an excise and a customs duty, it was more convenient that one board should collect the whole.

More than half the revenue was produced by the excise and customs. It was, therefore, of paramount importance that these two branches should be carefully fostered, simplified, and systematized. When Mr. Pitt assumed the control of the finances, after the American war of independence, he found the customs in a state of such inextricable confusion, that the most experienced merchants were unable to foresee what would be the amount of duty affecting the articles they were importing, or to know the course to be followed in entering or clearing their vessels. In the midst of a chaos of contradictory statutes, irreconcilable systems, and arbitrary regulations, the inheritance of a century of bad government, the clerks of the custom-house ruled with supreme authority over the whole

commerce of Great Britain. Among the measures by which Mr. Pitt gained his right to be considered the greatest of English administrators, the one which did away with this state of things was by no means the least in value. In 1787 he succeeded in carrying through Parliament an act abolishing all the existing duties, and substituting in their place single duties on each article, according to a regular tariff, which was still further assisted by a reform in the method of transacting business in the custom-house.

But the new system had scarcely produced all its beneficent results, when the French war broke out; and for twenty-three years Parliament piled one customs law upon another, until the old confusion reigned in the custom-house as absolutely as ever before. The same article paid duty repeatedly, — now to the customs, now to the excise. The laws were without a system, and impossible to class under any imaginable plan. There were bounties or drawbacks upon half the articles of commerce or production. Fees were multiplied to excess. Five hundred different statutes regulated the customs alone. A complete and vigorous measure was urgently required for the consolidation of the customs laws; and the example of Mr. Pitt made the neglect of the step by any subsequent government all the more obvious and inexcusable.

This, however, was a part of the situation which lay nearest the light, and was most easily reached. It concerned only the form of collecting the taxes; and the real difficulties of the case extended throughout the whole length and breadth of the system of taxation itself. There seems to have been scarcely a fragment of the English revenue laws which was not marked by peculiar faults of its own, besides sharing in the radical vices that lay at the foundation of almost all of them. The principal exceptions which modern writers appear to have made in this sweeping condemnation of the old system are those of the house and land taxes, and the property or income tax, as the most economical and the most just that existed. But these required a degree of reform and alteration which would almost have converted them into new taxes.

It is unquestionable that the nation, apart from the form of its burdens, was very much over-taxed. The most ordinary and necessary articles of consumption were overloaded with burdens. The case of the salt duties was a notorious example of this evil. The natural cost of salt was less than eightpence the bushel, while the law required fifteen shillings on each bushel, raising its price to about twenty-two times its value. The same objection ran through most of the excise duties. This was, however, comparatively a simple difficulty; and although it needed prompt and effective correction, no very high intellectual power was required to arrive at the remedy, so long as the question of protection was not involved.

But it was rare indeed that the question of protection could at that time be kept out of any projected improvement in English taxation. Protection coiled like a tangled cord around and over and through every portion of British finance. The reformers, who, with no enmity to the long-established principle of protecting home industry, still wished to relax a little here and there the strain of taxation, which was tearing the very muscles out of the bodies of their poorer fellow-countrymen, tugged now at one projecting evil of the vast system, and now at another; but wherever they came, they found the whole mass, confused and chaotic as it was, bound hard and fast in the inextricable meshes of protection. Some alarmed interest sprang out of the darkness to cry shame, and to excite popular hatred against them at the very moment when they were hoping at last to have found a chance of stirring the phlegmatic government and the wretchedly indifferent Parliament into taking a step which could by no possibility harm any living creature.

Everything was protected. Every petty interest of the country had its rag of protection, — not merely against the genius or activity or superior circumstances of a foreign rival, but against allied branches of industry at home. Tiles complained if slates were untaxed. Wool was jealous of cotton. The brain of the Chancellor of the Exchequer was racked by hopeless efforts to maintain a proper equilibrium between home

industries, while protecting them all against the foreigner. The irresistible logic of the principle was really carried out to that extent from which tamer modern protectionists shrink. One part of the United Kingdom was protected from the other. The products of English industry were protected from the rivalry of Ireland, and the manufactures and produce of Ireland were only admitted under suitable precautions into England. It is true, that the policy was, in this particular case, pursued with somewhat superfluous energy, since not only were heavy duties exacted for the protection of manufactures which actually existed in Ireland, but also for that of some which did not exist at all, and never had existed, and which a moderate degree of knowledge of the subject would have shown never could exist; so that the Irish people enjoyed, through a long series of years, the most favorable of possible opportunities for observing the operation of a thoroughly efficient protective system of their own choice.

Nor was this all. Besides the protection granted to each industry against its neighbor, besides that which built a wall between the different states of the same empire, and besides that which guarded them all against the foreigner, the British system undertook to protect one foreign nation from another; and this was even regarded as a masterpiece of statesmanship. A brilliant example of this form of protection was furnished in the case of Portugal. For an entire century, down to 1831, the British people were condemned to drink the vintage of Portugal, in order to protect both countries against the superior attractions of French wine.

But even as regarded the ordinary and almost universally accepted practice of protecting home industry against the foreigner, the system of 1816 was far in advance of the mild conceptions of 1866. The statesmen of that day shrank from no consequence of their theory. It was not enough to lay protective duties of sixty or a hundred per cent on rival enterprise. It was not even enough to tax at the rate of fifty per cent as a manufactured article the very mummies that were imported from Egypt, lest they should interfere with the Brit-

ish product. If the principle was good at all, it was held to be good to the extent of absolute prohibition; and as, on the one hand, the law required that the Englishman who had been so unlucky as to die could only go to his grave in a winding-sheet of British woollen, so it was enacted, that any man, duke or beggar, who might be suspected of wearing or possessing even a silk handkerchief of foreign manufacture was liable to have it taken from his neck or his pocket, or to have his house entered and ransacked from garret to cellar. There was an element of the most intolerable tyranny inherent in the very nature of the prohibitive laws.

It might be supposed that difficulties and confusion enough would have resulted from such a revenue system. But in point of fact, there was nothing peculiarly strange or remarkable in it. Similar principles lay at the base of almost every financial theory at that time, and the countries of Europe, and even of America, accepted them as their rule of action. It was here that the British system began to show itself in its own strength; but it was only when the colonial and navigation laws were added to the over-taxation and to the eccentricities of ordinary protection, that confusion became confounded, and absurdity ran riot in the English statute-book. The principle which then lay at the bottom of the colonial system was, that the colonies existed for the benefit of the mother country; and the successful protest of the North American Colonies, in their war of independence, had not yet succeeded in convincing Great Britain of the radical error of this theory. No ships but British ships could enter the ports of a British colony, and no market but the English market was open to the colonists. The West Indian sugar-planter was obliged to send his produce to England for sale. He might perhaps have gained something had he refined it before shipment; but the British refiner would have suffered, and the British mercantile marine must have the benefit of the bulkier freight. In return, he was obliged to receive only British goods, or goods which had passed through Great Britain. But the West Indian colonies were dependent upon the nearer

ports of the United States for many of the very necessaries of life; and the negroes died of hunger when those ports were closed. This necessity of obtaining food was alone the cause of a slight relaxation in the law, by which a limited trade was permitted in certain articles, from certain ports, by a certain class of vessels, with the United States. On the other hand, if the price of colonial sugar was twice or more than twice that of the foreign, as was sometimes the case, the British public was required to pay the additional tax of several millions sterling annually for the benefit of the colonial system.

The timber trade with the Canadian colonies was a still more curious example of British protection and its complications. It was undisputed that the timber of Norway was not only the easiest to procure and the cheapest, but also much the best in the market. But the interests of the colonies required protection, and the British marine was accordingly built of inferior material. The reformers demanded the abolition of this mischievous system, and called upon the shipping interest to join in obtaining its repeal. The ship-owners refused. They resisted desperately every attempt to reopen the Norway timber trade; and their argument was, that, as the naval power of Great Britain demanded a numerous merchant marine as its basis, and as the timber trade with Canada supplied an enormously bulky freight, and required long and frequent voyages, it would be a violation of the very first principles of British policy to allow their ships to be built of the best timber. The liberal members of Parliament, irritated at this extravagant taxation of the nation for what they considered a gross piece of jobbing, tried to reduce the argument to the absurd, and indignantly declared that Parliament had better at once enact by law that the Newcastle colliers, instead of bringing their coal direct to London, should sail "north about" to their market, and make a preliminary tour around the United Kingdom. The answer to the attempted sarcasm was quick and decisive. The ship-owners retorted, without hesitation, that, although it must indeed be admitted that the Newcastle colliers were allowed by law to choose the shortest and easiest route to

London, still it was not to be supposed that even here the shipping interests had been overlooked. The laws practically forbade the use of the inland and cheapest transit from the nearer mines, with the single object of encouraging and developing the coastwise shipping in the interest of the national marine.

A protective system so logically perfect, so rigid in its obedience to a single purpose, so universal in its scope, so minute in its application, contains elements almost of grandeur. The ruling class of England appeared in it as the masters of the world. Around them and in harmony with them stood the English nation. The colonies existed for their benefit. Allied nations were made use of for their purposes, and the rest of mankind were their enemies. It is literally true, that, if the British Parliament had at this time possessed the power to protect the interests of the people of the United Kingdom and its colonial dependencies by causing every other existing nation to be annihilated from the surface of the earth, an enactment to that effect would have been only the logical sequence of its whole system of legislation.

It is of course impossible even to conjecture what was the actual cost to the citizen of this indirect taxation. But there is one means of showing how grievously it pressed upon the public, and how intolerable it would have been if the power of the government could have enforced it.

There is a strange law of finance, which has fixed a limit to indirect taxation, and decreed that, where the line is passed, a new agent shall intervene for the protection of a misgoverned people and the vindication of the laws of statesmanship. At a certain point, the smuggler appears and rescues the nation from its burdens. The extent to which smuggling is carried is, therefore, the measure of bad revenue systems.

In England in 1816 there was no limit to the activity of the smugglers. From Kent to Dorset and Devonshire, the whole line of the coast swarmed with them, and wherever they came the sympathies of the people were with them. Coast guards were multiplied in every direction. The army itself was em-

ployed in the service of the custom-house. The severity of the penalties was terrible; yet any gentleman in London could, at ten days' or a fortnight's notice, obtain any prohibited article from the Continent, at thirty per cent advance upon its cost there. Foreign silks were prohibited; but, in spite of the prohibition, they were to be seen in every haberdasher's shop in England, and in the very Houses of Parliament. Mr. Hume, the well-known member for Aberdeen, when arguing once against the absurdity of those protective laws, "produced his bandana handkerchief before the very eyes of the House, and, having triumphantly unfurled the standard of smuggling, blew his nose in it, and deliberately returned it to his pocket." The only vindication of the offended majesty of the law attempted by the Chancellor of the Exchequer consisted in reminding Mr. Hume that any member of the House had an absolute right to seize that bandana handkerchief and export it to a foreign country. "Upon every information laid under this prohibitive law," said Mr. Huskisson in 1826, "the chances are, that the informer and the constable have bandanas round their necks, and that the magistrate who hears the charge has one in his pocket." Another prohibited article was Scotch whiskey, and Mr. Hume took again the occasion to inform the House that he had at that moment smuggled Scotch whiskey in his cellar, and he defied the whole power of the government to prevent his having it.

These were, however, only luxuries. The case was much worse when it concerned the great articles of consumption among the people. Salt paid its duty of two-and-twenty times its value on fifty thousand tons annually; but it was supposed that twice as much more was consumed which paid no duty at all, or only the moderate one which made the profit of the smuggler or the thief. Soap was smuggled to nearly as great an extent as salt. By this universal evasion, fraud, and violence, the whole national character was perverted and degraded.

But even the spectacle in England was a harmless comedy in comparison with the results of this same system in Ireland.

If armies of four or five hundred smugglers, supported by the population, fought pitched battles with the coast guard and revenue officers on the chalk downs of Sussex and Hampshire, and were not always defeated, there reigned all over Ireland, from Dublin to Kinsale, a state of actual civil war, which was waged by the peasantry, with horrible cruelty, by assassinations and savage deeds of violence that are still remembered with vivid force in that unhappy country, and which were met and repressed, so far as force could repress them, by equally exasperating acts of legalized cruelty and military violence. Here it was the excessive duty on spirit that was intolerable to the population; and yet this duty was but five shillings and sixpence on the gallon, while more than twice the charge was borne in England without serious difficulty. Financially, the result was, that about three million gallons paid the tax, and about seven millions were distilled and consumed in defiance of the law. Politically, the attempt to enforce the tax resulted in making Ireland more than ever a danger and disgrace to Great Britain.

Such were some of the results of over-taxation and of an overstrained protective system. It is obvious that the very highest and most statesmanlike qualities were required in the government that was to attempt the task of reform. But it is not to be supposed that this was the only field for the activity of reformers in the financial affairs of the country. The operation of the taxes on the welfare of the people is only one side of financial science. The administrative system under which the revenue is collected and expended, if not first in actual importance, is certainly first in order of time among financial problems; for it is useless to expect economy and foresight from a wasteful and blundering treasury, whose errors are not the mere mistakes of an incompetent chief, but are the inevitable result of false principles.

It is absolutely impossible to furnish anything like a fair picture of the system under which the finances of Great Britain suffered at the beginning of this century. The student, who has labored month after month to comprehend it, turns away

at last with despair, and abandons the attempt as not worth, even if successful, a tenth part of the mental effort that is required to fathom it. There was no beginning, no middle, and no end. There was a bottomless ocean of accounts, without a system, without connection, and without result. There were innumerable departments and bureaus, independent of each other, and accountable to no one. The mysteries of the exchequer were portentous. Few Englishmen, even then, had any conception what functions were exercised by such mediæval creations as the Department of the Pells, the Pipe Office, and the Tally Court, the calm abodes of happy sinecurists, whose duties of inconceivable clumsiness had long been assumed by the Bank of England and other offices, but who were still permitted to perform by deputy an imaginary routine. If any one should still be unwisely curious to penetrate these forgotten absurdities, he must consult the reports of Parliamentary commissions from 1824 to 1834, which resulted in their abolition. England, Scotland, and Ireland had each its own exchequer, repeating these costly eccentricities inherited from the Middle Ages.

Leaving this part of the investigation as of merely secondary importance, the main inquiry must be directed to the method of administering the treasury. This was an inheritance from Mr. Pitt. When he had remodelled, in 1787, the whole system of English finance, his great object was, not only to restore order and method where only confusion had existed, but to secure the ultimate redemption of the public debt. His idea seems to have been, that, if a sufficient portion of the permanent revenue were to be set aside and appropriated by law to the payment of the annual interest and a certain part of the principal of the debt, the result would be, not only to simplify the accounts, but to furnish an additional guaranty for the national credit. He therefore divided the whole of the revenues of the country into two branches, applicable to two distinct classes of payments. The first comprised all the permanent taxes, united into one *consolidated fund*, and this was by law appropriated to the payment of the permanent

charges of the national debt and the civil list. The second comprised the taxes voted by Parliament only for the year, and was left for the charges of the army and navy, and the civil expenditure of the government.

Mr. Pitt's famous sinking fund was the supplement to this plan. His original scheme was, that one million sterling should be applied annually from surplus revenue, and should accumulate at compound interest until the whole debt should be extinguished.

These large and ingenious arrangements answered all Mr. Pitt's wishes for the first five years. His success was such as to place him unquestionably at the head of all living statesmen. But then the French war broke out, and no possible financial scheme, except the simplest, could have resisted the pressure of the next twenty-three years. In a surprisingly short time all Mr. Pitt's elaborate structure crumbled to pieces. Yet not only he, but all his successors, clung to the hollow shells of the two funds with an obstinacy as remarkable as their conduct of the war itself. For every new loan that was raised, Parliament carefully set aside some new tax to meet the annual charge, and appropriated it to the consolidated fund, as though that fund still had some inherent virtue which would insure the payment of the national obligations in case all the rest of the system should become bankrupt, or as though every tax, of whatever description, was not just as much pledged to the payment of the interest of the debt as though fifty acts of Parliament had reasserted the fact. This, however, was only a cumbrous form of management. The sinking fund had became a most pernicious burden on the nation. Every loan that was contracted, however ruinous the terms, was increased by the amount of a certain proportion of the whole, which was set aside as a part of the sinking fund. In other words, it was expected to pay off the debt by borrowing money at a time when the nation's credit was at its lowest ebb. Under this treatment, the sinking fund rapidly grew to gigantic proportions. It was perfectly evident that the debt also increased in a similar or a greater ratio; but

nevertheless the government actually introduced a measure, which became law, restricting the operation of the fund, on the ground that it would pay off the debt too rapidly. Nothing could shake the infatuated faith of the British people in the magical efficacy of these two funds. The argument against them was simply met by the assurance that, whether right or wrong, the confidence of the public and the respect of foreign nations were so largely founded on a belief in the efficacy of the system, that the national credit would not stand the shock of abandoning it.

However effective this answer may have been during the dark years of the war, when the salvation of England depended on her credit, it seems as though the return of peace should have deprived it of further force. Yet the two funds continued to flourish with unabated energy. The original scheme of Mr. Pitt had long been lost, and little of his project remained except the names and the mistakes. The system had ceased to be comprehensible. The public accounts were a chaos, and the budget speeches seem really to have been made with the intention of adding to the confusion.

Parliament never knew, nor could know, what was the exact relation between the income and expenditure of the year; and when unreasonable radicals supplicated for a balance-sheet, they were answered as though such an innovation were big with revolutionary dangers. The fact of the total want of a balance-sheet seems to modern minds so incredible, that it may be well to quote a passage from the report of a select committee on the public accounts, made to Parliament in 1822, six years after the time now spoken of.

"The principal and most prominent defect in the present form of the accounts is, that they neither do, nor can, exhibit any balance between the income and expenditure of the year. The income side of the account shows the amount collected from the subject and the amount paid into the exchequer within the year. . . . . The expenditure-sheet has not been framed on this principle; and, with respect to some of the chief heads of the service, such as the army and the ordnance, instead of containing a statement of the issues made from

the exchequer, it gives the amount of payments by the distributing public officers, to whom the moneys required for their respective services are issued from the exchequer. The account of incomes and the account of expenditure, therefore, are accounts of different kinds, and no true balance can be struck by comparing them together."

No man, whatever industry he might possess, could come to an undisputed conclusion upon the financial situation of the country. Mr. Hume asserted, in 1821, and no less an authority than Mr. Ricardo indorsed the statement, that not only was there a difference of some millions between the budget and the annual accounts, in regard to the reduction of debt, but even on so simple a matter as the deficiency of the consolidated fund there were three public accounts, all signed by the same person, all relating to the same period, and all presenting a different result.

If Mr. Hume, whose Scotch sagacity and indefatigable patience have never been equalled, and Mr. Ricardo, who was the first political economist of his time, abandoned in despair the attempt to unravel the complications of the consolidated fund, which was then the principal part of the financial system, the chance is small indeed that any man in the present day can arrive at a better result. The budget speeches were almost silent in regard to it, and the information given by the official accounts was apparently only such as the humorous disposition of the public accountant incited him to furnish by way of a riddle for the amusement of over-zealous members of the House of Commons. If the difficulty even were explained, it is doubtful whether most people could understand the explanation. The nature of the fund has already been described. Certain taxes were appropriated to certain purposes. So long as the taxes were sufficiently productive for those payments, the system worked tolerably well. But there were sometimes years when the taxes fell off, and their amount was not sufficient to meet the charges put by law upon the fund. When this happened, the government borrowed the amount of the deficiency from the Bank, pledging exchequer bills in return, and pledging the next quarter's receipts of the

fund to meet and pay these exchequer bills. The deficiency meanwhile might or might not be reckoned as a part of the annual deficiency, or a deduction from the annual surplus. The Chancellor of the Exchequer enjoyed a wide latitude of conscience on that point, and it was sometimes very convenient to be able to shut his eyes to a deficit of seven or eight million pounds, with which of course neither he nor the House nor the country had anything to do, since it concerned only the consolidated fund. The consolidated fund existed for the very purpose of providing for the national debt, without allowing the matter to enter into the range of common questions of supply. There was, therefore, much to be said in favor of the official view of the question.

But the transaction did not always end even here. The fund borrowed, as a sort of independent corporation, the amount of its arrears from the Bank. Let us suppose ten millions to have been borrowed in this way. The Bank received the taxes composing the resources of the fund as fast as they were collected. Let us suppose a quarter's income, or say eight million pounds, to have been nearly received, constituting the guaranty for the debt owed by the fund. The government now stepped in and borrowed this eight million for its immediate wants, thus exhibiting the strange anomaly of first creating a fund for no other purpose than to secure the payment of debt, then allowing that fund to create a debt of its own, and, finally, itself borrowing, as an advantage to the public, its own money, which was already doubly pledged, and substituting its own bonds as the security for the security of the security for the national securities.

Is it to be wondered at that the cleverest men in England were mystified when these transactions were put before them piecemeal in separate accounts, and they were asked to guess the riddle? It was notorious, that the Chancellor of the Exchequer himself, whose experience at least was ample, did not understand the very explanations which he himself made to the House, far less the accounts that came to him from his own department. The officers of the Exchequer openly confessed

that they could not comprehend the accounts which they made out, and to which their names were signed. The public knew nothing but its taxes.

There was another evil incident to this confused condition of the finances. The functions of the Exchequer were assumed by the Bank of England; and in the absence of a powerful mind at the head of the government, the Bank had become almost the exclusive director of the financial policy of the country. The management of the Bank was not so remarkable for ability at this time as to make such an arrangement a great advantage. Mr. Ricardo went so far as to say that it was totally ignorant of the principles of political economy. When the House of Commons decided, in 1819, to return to specie payments, the Bank presented a remonstrance which contained a remarkable paragraph, appealing to its duties to the community at large, "whose interests in a pecuniary and commercial relation had, in a great degree, been intrusted to its discretion." This assumption of authority, on the part of a mere subordinate office, was treated by Mr. Peel as a melancholy truth, the fault of Parliament itself, and of the government which had thus allowed its functions to fall into the hands of a private corporation.

If an energetic reform was required in the system of taxation and in the administration of the public property, it was certainly not less necessary to subject the expenditure to the most rigid scrutiny. A thoroughly economical government is among the rarest blessings ever vouchsafed to a nation, and a long period of war does not tend to teach or to encourage the habit of frugality. Besides, the English system of goverment and of society was essentially an extravagant one, and only the most resolute popular opposition could make the ruling party conscious of this fact.

There were two great branches in the national expenditure, which were about equal in amount. There was, in the first place, the regular annual interest on the national debt, funded and floating, which amounted to more than £30,000,000 sterling; and this was, for the time, beyond the reach of economy.

But even here there was much to be done. It was necessary to fund a large amount of the exchequer bills. It was necessary to look sharply to the management of the debt by the Bank. Above all, it was the part of a good finance minister so to adapt his measures as to encourage popular confidence in the national credit, in order to hasten the moment when a reduction of interest should be possible on the most burdensome of the public securities. This in itself involved a whole system of finance, and demanded ability of the highest order.

The second branch of the expenditure was divided into several heads. There were the civil expenses of government, the army, the navy, the ordnance, and a miscellaneous division which embraced a variety of appropriations as well for internal improvements as for other purposes.

The most immediate want was, of course, a large measure of reduction in the armaments, to be followed by an elaborate reform in the various departments. During some years of the war, the expenditure on this account had risen to more than seventy millions, exclusive of foreign subsidies. The question of what should be the proper peace establishment was one of especial difficulty to a generation which had scarcely known any condition but that of war; and it was made still more embarrassing by the disturbed state of Ireland, requiring it to be treated like a conquered country, as well as by the immense colonial possessions of Great Britain, which seemed to demand protection on account of their exposed positions and the mixture of races.

The civil expenditure of the government had also been allowed to flourish in unchecked extravagance during the war. There was a rich field for reformers and radicals in the extirpation of those numerous sinecure offices whose quaint names and obsolete functions were little known to the public, except so far as the regular annual parliamentary accounts established the fact that there were still men who drew the salaries attached to them. The whole amount of the civil expenditure did not, indeed, form a very large proportion of the public burdens. Two or three million pounds covered the whole

charge. But, large or small, it was too heavy for the taxpayers, who were justly indignant if a single shilling were unnecessarily added to the enormous sum which they were obliged to pay. There was the more excuse for the most rigid economy, since the privilege of possessing a constitutional monarch and an aristocratic court was by no means obtained for nothing. His Majesty's household cost the nation more than a million sterling annually, with no visible return, since the King was blind and insane, and lived in close confinement at Windsor. How much the Prince Regent cost, Heaven only knows. He drew £65,000 a year by way of pension on the consolidated fund; but as he was perpetually in debt, and as the country was perpetually called upon to pay his debts, it is not easy to discover where the expense ended. Besides the King and the Prince Regent, there were fifteen royal princes and princesses who drew pensions, varying from £35,000 downwards, from the consolidated fund alone, making an aggregate of rather more than £250,000 annually, on account of the royal family; in return for which the nation not only failed to obtain a magnificent court, but was obliged to satisfy itself with one which was particularly offensive to its tastes.

It was, however, the British theory to pay public servants well, except where they were not paid at all. Perhaps nothing would have stung the average British mind more sharply, than the idea that the representatives of his country abroad were unable to maintain as high a scale of expense as those of France, Russia, and Austria. The example of Prussia and the United States of America was of no effect, except to place those countries low in the British estimation. It was certain, however, that the gratification of this fancy added largely to the national expenditure; not so much, perhaps, from the actual salaries paid, as by the scale of expense which was encouraged, and the habit of lavishing large sums for small objects. The most burdensome form in which this practice showed itself was in the shape of pensions, superannuation allowances, and similar charges, either for life or in perpetuity; which, considering the fact that the salaries themselves were

in most cases so liberal, seem to have been somewhat superfluous, and by no means calculated to impress any lesson of economy upon the servants of the crown. The precise amount of all the different classes of pensions after the war cannot easily be ascertained, if, indeed, it is at all possible to collect them from the published accounts of so many various departments throughout the three kingdoms; but they formed one of the most serious items of expense with which the government had to deal, and those connected with the army and navy gave occasion, in 1822, for an effort on the part of Mr. Vansittart to diminish their burden, which was the last of many financial operations effected by him, and which made his name long notorious.

We have now passed in review, rapidly, and no doubt superficially, but at as much length as is possible, the financial difficulties with which England at the close of the war had to struggle, so far as they related to the revenue. It would have been fortunate for her if these had been the only evils bequeathed to her by the war. Serious as they were, although they demanded the most laborious attention, the exercise of the highest order of intellect, and the most resolute perseverance, there remained still another evil, which lay behind them all, and demanded an immediate remedy.

Considering the length and the violence of the strain to which the resources of England had been subjected, it is rather a matter of surprise that her currency had not become utterly worthless, than that it should have suffered a certain degree of depreciation. The Bank had suspended specie payments in 1797; but for more than ten years after that time the Bank paper remained on a par with gold, or at a very slight discount. It was only in 1809 that the price of bullion began to maintain itself at a permanently higher rate, which continued till the close of the war. In 1810, the average depreciation of the currency was 13½ per cent. In 1814, it was 25 per cent, and this was its lowest point. In 1815 and 1816, the Bank paper gained credit, and averaged $16\frac{7}{16}$ per cent discount. Towards the close of the year 1816 the currency rose

without the necessity of legislation, until it stood on a par with gold. Unfortunately, however, the mere fact that the Bank notes were of the same value as gold was by no means equivalent to a return to specie payments. The country had gone through a period of depreciation, and, if this were allowed to continue, was certain to be demoralized by it. Already the agricultural interest complained because the farms, leased at a time when corn sold at six pounds the quarter, could no longer be made to pay the extravagant rental thus fastened upon them. The business classes, the merchants, the bankers, the retailers, naturally timid in the face of measures likely to affect their interests, trembled with fear at the thought of commencing business upon a system entirely new to all but the oldest among them. Every month that the return to a specie basis was delayed strengthened the ultimate opposition to the measure, and encouraged the party which maintained that promptness was dangerous, and that it was necessary by act of Parliament to prevent the nation's too easy progress up an ascent so difficult that few nations have ever succeeded in climbing it.

The history of the process by which Great Britain succeeded at length in restoring its original standard of value is one so important, so instructive, but also so complicated and disputed, that it cannot be dealt with in a few sentences. It requires an entire chapter to itself. It called into full play the best ability in England, and for many years after the result was accomplished a perpetual dispute was maintained in regard to its justice and its effects. Among the many financial difficulties which surrounded the government of that day, this was the one which a high statesmanship would have considered the most pressing, for it lay at the basis of all transactions involving an exchange of values, as well between the government and its subjects as between every individual and his neighbor.

With this last difficult problem of the currency our survey of the financial situation of Great Britain may be considered completed. Yet something remains to be said in regard to the men upon whom the vast labor fell of restoring order in the

national affairs, and of creating the new formulas by which the economy of the nation was destined in the future to be represented. For it is obvious that between such a condition as has been described and that which England enjoys at present there is not a difference of degree, but of kind. It is a complete revolution that has taken place, and not merely a modification. Only fifty years have passed, and there has been no break of continuity; a steady and natural process of development has been always going on, always irresistibly tending towards one result, until at length we find that the principles upon which the government of England acts are the direct reverse of those which it considered essential in 1816. Mr. Huskisson, Mr. Peel, and Mr. Frederick Robinson were all in the government at the close of the war, and supported Mr. Vansittart's measures so far as they were called upon to do so; yet these were the very men by whom the subsequent policy was created and developed. There appears to be something that needs explanation in this curious copartnership.

Lord Liverpool's followers comprised a considerable majority of the House of Commons, and usually followed their leader without useless remonstrance, wherever their orders directed. But nevertheless the government itself contained two classes of members so strangely differing in character that their successful co-operation may well be a matter of surprise.

Lord Liverpool's own opinions were naturally sound and liberal upon economical questions, though he wanted the force of personal character to stamp them upon his administration. Nor indeed was there even in men like Lord Castlereagh, Mr. Vansittart, and Mr. Rose any such devotion to antiquated prejudices as might be supposed from the condition of the departments they directed. Mr. Vansittart was not a man gifted with the blind Toryism of Lord Sidmouth, or the narrow-minded perverseness of Lord Eldon. He was simply a thoroughly incompetent man. It would scarcely be worth the while to dwell upon his qualities at any length, if it were not that he was almost a perfect representative of the old school of financiers, — the school of Perceval and Addington, — a

school which had sprung from Mr. Pitt's side when his better days had passed, and which lent the influence of narrow minds to encourage and aggravate the mistakes of a great one. English finance has not even yet entirely cleared itself from the traditions of this period.

Mr. Vansittart had served long in the treasury, and had stored his mind with all the intricate knowledge of financial machinery that a laborious subordinate can always so readily learn. Mr. Pitt, no doubt, was an object of his unbounded admiration. But the qualities which he would admire in Mr. Pitt would probably be precisely those which caused him, with all his genius, to create nothing which has endured. Men like Mr. Vansittart and his contemporaries in office thought it little that Mr. Pitt had aimed at magnificent results, that his ambition led him into a superb attempt to pay off the national debt, and that to effect his purpose he had created, with scarcely any assistance from precedent, a great and admirable system where none existed before. What dazzled the eyes of Mr. Pitt's successors was, that the machinery invented by him was rich in detail and ingenious in expedients. That every loan should have its special tax, that every tax should go to a special fund, that each fund should be so constructed as to balance and support the other, — that there should be wheels within wheels, and springs beneath springs, until the whole structure was elaborated to a point of theoretical perfection, — this it was that seemed wonderful to the men that had seen its creation and had received it from the hands of its dying inventor. The results of such an education were most disastrous to England, for there arose a race of so-called financiers; — men who drew their political economy from the traditions of the Exchequer, and their financial knowledge from the Stock Exchange; men whose highest idea of a policy was the skill to place a loan at a half per cent better terms than its predecessor had obtained; men who to effect this tried to mystify the public, and to avail themselves of all the complications in which the official accounts were so rich; men who in the struggle to obtain means for carrying

on the war forgot that there were laws which regulated the limits of taxation, to go beyond which was a folly and a crime; and finally, men who, in their zeal to raise money, entirely disregarded the fact, that the first duty of a finance minister is to exercise some degree of economy in spending it.

As a Chancellor of the Exchequer, Mr. Vansittart's incapacity was scarcely a matter of dispute. But he possessed, from long experience, the kind of tact and business knowledge which gives men influence in the House of Commons, and frequently enabled him to meet with success the attacks of the Whig opposition. There was in his character a fund of good nature and a cordial indifference to abuse which attracted sympathy, and protected him when opposition members howled in his face, that "the present distresses were occasioned by having a miserable, miscalculating, puny Chancellor of the Exchequer, who did not know the resources of the country, owing to the ignorance and want of power of his little mind." Although a heavy burden to the Ministry of which he was a member, he long retained his office, and only retired to the honorable ease of the House of Lords in 1822, after having been ten years at the head of the finances.

Of the liberal wing of the administration Mr. Huskisson was by far the ablest member, and indeed it is not too much to say that, within his own sphere of economical subjects, he was not surpassed by any man then in public life. The extent of his knowledge, the soundness of his judgment, the breadth of his views, and his natural instinct, leading him always to stand just so far in advance of his contemporaries as to inspire them with confidence in the safety and moderation of his guidance without obliging them to accept paradoxical or unpopular truths, — these qualities combined to give Mr. Huskisson a personal weight which only needed the support of high office to prove itself in great administrative reforms. But, unfortunately, he was no politician, and in consequence had so managed his party course as to throw away the power he had a right to claim, until at forty-six years old he still found himself buried out of sight as Chief

Commissioner of Woods and Forests, when he might and should have been in a commanding position in the Cabinet.

The political blunders of Mr. Huskisson had thrown a younger and much weaker man into the foreground. Mr. Frederick Robinson, the Vice-President of the Board of Trade, rapidly rose to be President of that Board, Chancellor of the Exchequer, Secretary for the Colonies, and Prime Minister. Mr. Frederick Robinson, Lord Goderich, or Earl of Ripon, by whichever name we may choose to call him, was a man of considerable abilities and a decidedly liberal turn of mind; but as a statesman he was particularly happy in having two great men at his side, Mr. Canning and Mr. Huskisson. With their assistance he accomplished great results, without it he found the burden of a high position intolerable. At the return of peace he was still in a subordinate office, but even there his influence was thrown, not without effect, on the side of progress and reform.

It cannot be said that this was the case with Mr. Peel, who was the Chief Secretary for Ireland at this time. Mr. Peel's power consisted, not so much in the opinions which he held and advocated, as in his capacity for changing them at the right moment. Few statesmen of his rank have changed their political creed so much and on so many points; perhaps not one has ever, like him, succeeded through all changes in retaining popular confidence and esteem. At the close of the war he was an extreme Tory; and although he was ultimately influenced greatly by his association with Mr. Huskisson, it was a very long time before he became a convert to those opinions on questions of trade which have made his reputation eclipse that of his teacher. It is one of the most curious facts of modern English history, that he who in 1817 was the ally of Lord Sidmouth and Lord Eldon should have become the disciple of Cobden and the model of Gladstone.

The ablest of all the statesmen of this period was certainly Mr. Canning. But, unfortunately both for himself and for the country, Mr. Canning had allowed the wave of political success to sweep over him, and to carry Lord Castlereagh on its crest.

It was not until Lord Castlereagh's death, in 1822, that Mr. Canning's influence obtained the control of the administration, and began to set in action the progressive energies of the nation.

All these men belonged to the Tory party. The old Whig opposition had little to offer that was better, if so good, and what little it had was soon lost. The ablest of the Whigs in the field of financial science was Mr. Francis Horner, who, as chairman of the famous Bullion Committee, had treated very roughly the strange absurdities of Mr. Vansittart. The report of that committee, of which he was for the most part the author, was made in 1810, and in spite of the triumphant vote by which, in 1811, Mr. Vansittart carried his resolution, that "the promissory notes of the Bank of England have hitherto been, and are at this time held to be equivalent to the legal coin of the realm," Mr. Horner's argument practically settled the question, and made his opponent's name an object of standing ridicule down to this day, — a result the more annoying, since Mr. Vansittart was not himself the real author of the resolution. It is safe to say that, if Mr. Horner had lived, his influence on the financial and commercial policy of England would have been very considerable; but his death, which took place in 1817, broke short a most promising career, and, combined with that of Sir Samuel Romilly, deprived the Whig opposition of all its best vital force.

For it cannot be said that Mr. Henry Brougham's brilliant qualities at all supplied the place of Mr. Horner's sound intellect. Mr. Brougham busied himself with economical questions, as he did with every other topic; but before and above all, he was a politician, and a selfish one. A man of far greater worth, from every point of view, was Mr. Ricardo, whose position as a member of Parliament often enabled him to infuse into the debates a spirit of philosophy which is rare enough in the best of legislative assemblies. He, however, did not enter Parliament till 1819; and his death, in 1823, took place before the new theories of internal policy were fairly developed. Another person, who came into public life at the same time,

but whose career lasted through all the vicissitudes of free trade down to a very late day, was an eminently useful and energetic reformer, whom the English public laughed at and abused during his whole life, but discovered after his death to have been one of those rare, bold, indefatigable, and scrupulously honest characters, whose existence makes amends for a world of Parliamentary nobodies. This was Joseph Hume, — a thorn in the side of each successive ministry, a sort of self-constituted tribune of the people, with an eye for abuses and a tongue for dilating upon them that made him at once the terror of ministers and of the House, which fled from his speeches with some reasonable excuse. Mr. Hume was, however, a man of broad and statesmanlike views, which is more than can fairly be said of Mr. Cobbett, though the latter was even more active in his denunciation of the evils that were so strongly stamped upon the system of internal government. In fact, the popular feeling was too strongly directed upon political grievances to allow of its giving any deep attention to difficult financial and commercial questions, the connection of which with its own objects was not always obvious; and popular orators, like Cobbett and Hunt, exercised only an indirect and very modified influence upon the development of those liberal and progressive economical theories which neither Whig nor Tory could claim as exclusively their own property, but which each party made use of in its turn.

Thus it will be seen how small was the number of prominent men who, in 1816, could exercise an influence in favor of reform. And in this respect it is only right to do justice to Lord Liverpool and Mr. Vansittart. Neither they nor their opponents considered finance as a field for party divisions. Mr. Vansittart's want was one of capacity, not of will. It is a curious fact that he, though administering a system in which protection was carried to absurdity, was yet in his opinions a free-trader, as was also Lord Liverpool. Both of them were far in advance on this point of the public opinion of their time; for the popular wishes so far as concerned finance were solely directed to the reduction of taxation, and the knowl-

edge of financial theories was extremely slight even among the wealthiest of the middle class. This was shown in regard to the income tax. Fifty years later the income tax was a popular measure, since it threw upon the holders of property an immediate burden which otherwise must have been borne by the poor. In 1816 the property tax was thoroughly unpopular, not only among the rich, but among the poor whom it relieved, and who actually allowed themselves to be persuaded that the heavy duties on corn, tea, beer, and tobacco were preferable to one which they did not feel! It was necessary, therefore, that the small body of political economists who saw in advance that free trade, whether suitable or not for other nations, was the only possible policy for England, should begin at the very foundation, and educate even those for whose special benefit their measures would immediately operate. There was no basis of existing public opinion upon which they could stand.

If, then, we attempt to sum up the results of this long inquiry into a condition of affairs now forgotten, we shall find that Great Britain, then a nation of twenty million inhabitants, was burdened with an annual charge of more than £30,000,000 of debt, to which was added more than £20,000,000 of ordinary expenditure; that her administrative system was in the highest degree cumbrous, expensive, and inefficient; that her revenue was drawn indiscriminately from every available source, without regard to the disastrous results upon national industries and the national character, and in violation of all the acknowledged principles of political economy; that her expenditure was extravagant, and without any sufficient check in public opinion; that her currency was deranged, and the standard of value fluctuating in such a manner as to stimulate powerful interests towards resistance to any return to the former specie basis; that her principal officers were unequal to the effort which a return to sound financial and economical principles would have required; that Parliament, with the exception of a very few of its members, was incompetent to deal properly with such a state of affairs,

and too apt to be influenced by personal and political motives; and, finally, that the people were themselves ignorant of the true nature of the difficulties under which they were laboring, and the few really progressive minds in England were obliged to trust to those natural popular instincts which in the end usually decide rightly in regard to the interests of the people.

It was not surprising that some of the most patriotic and excellent Englishmen were in alarm lest their country should succumb under this accumulation of difficulties. And yet a few years of peaceful development enabled it to support the burden of the debt with an ease which is a just subject for pride; it purged the administrative system of its abuses, and made it comparatively simple, economical, and efficient; it created a wholly new system of revenue, founded on sound laws, and interfering to the least possible extent with the industry and character of the people. If it has not restricted the expenditure, and reduced the debt so far as was possible and right, this is merely because the people themselves, in their wealth, became indifferent and extravagant; it restored, without any concession to interested clamor, the ancient and only sound basis to the currency; it educated a race of statesmen who, in regard to economical subjects, were certainly not inferior to any in the world; it placed in Parliament numbers of men who, whatever their faults may have been or may now be, were, and are now, better acquainted with those laws of financial science — ignorance of which has become inexcusable in legislators — than the members of any other legislative assembly in Europe; and, finally, it has diffused among the people a degree of acquaintance with the true bearing of their own interests, which has strangely modified their national tendencies, and will ultimately wholly break down the ancient barriers of insular prejudice and exclusiveness.

The process by which these results have been effected, and the consideration of what has still been left incomplete, must be a worthy subject of careful study; but it involves so great a variety of topics, and so wide a range of doubtful or dis-

puted conclusions, that, unless rigidly restricted within the proper limits of the regions that belong purely to finance, the discussion would soon extend itself beyond any ordinary capacity of endurance, and lose the interest which belongs to it of furnishing instruction to other nations placed in circumstances more or less similar.

# THE LEGAL-TENDER ACT.*

*History of the Legal-Tender Paper Money issued during the great Rebellion, being a Loan without Interest, and a National Currency.* Prepared by HON. E. G. SPAULDING, Chairman of the Sub-Committee of Ways and Means at the Time the Act was passed. Buffalo. 1869.

*Opinion delivered in the Supreme Court of the United States by* CHIEF JUSTICE CHASE, *on the 7th of February, 1870, in Regard to the Construction of the Legal-Tender Act.*

DURING the Rebellion the United States armies suffered many disasters in the field, which for the moment were felt as direct and personal misfortunes by every loyal citizen. So strong was the public feeling of anger and astonishment, that Congress appointed committees of investigation, to examine into the causes of these military failures, and subjected the whole conduct of the war to a searching and sometimes a severe criticism. In finance, on the other hand, the nation suffered only one great disaster, but its effects have extended far beyond the period of the war, and are likely to be felt with unmitigated force for an indefinite time yet to come. The causes of this catastrophe have not been investigated by Congress; but as the day may probably arrive when the national government will have been forced to accept the fact that the act of national bankruptcy was a calamity so terrible as to involve the personal and political credit of every man in whose

* From the North American Review for April, 1870.

charge the people had then placed the common interests, it may be useful to point out the path which the future congressional committee on the Conduct of the Finances will be compelled to follow in investigating the causes which led to that miscarriage, the results of which have far exceeded in importance the defeat of any of the national armies or the failure of any campaign. The timid and hesitating criticism with which the subject has been commonly treated speaks ill for the sound sense of the community. The public has so thoroughly adopted the idea that it is itself the responsible governing power, and its representatives only delegates to enroll its orders, that the healthy process of criticising a policy once adopted seems to it almost an attack on its own authority. The confusion of ideas involved in this assumption of responsibility is peculiarly unfortunate. The task of citizens who are selected to govern is one thing. They bear the burden of leaders, and they enjoy the honor. They are, too, at liberty to excuse or palliate their mistakes, their ignorance, or their crimes by whatever argument they can make to answer their purpose. But the task of the public is wholly different. It is that of insisting, without favor or prejudice, on the observance of truth in legislation and in the execution of the laws. To apply the principles of truth in criticism is the first duty of every writer for the press and every speaker on the hustings. Whatever seems harsh in criticism or vehement in temper may be excused in the citizen who clings to the rigid logic of fundamental principles, and who leaves to those whose public conduct fails to reach his standard, the labor of justifying themselves in the best way they can.

It is customary, however, for critics of American finance to begin at this point with the assumption that the Legal-Tender Act was necessary and inevitable. As a matter of criticism, nothing can be more absurd than such a beginning; and as a matter of intelligence, nothing can be feebler. Congress and the country permitted no such assumption to be made in excuse for the beaten generals at Fredericksburg and Chancellorsville. There can be no satisfactory conclusion from such a

premise. No sound result can be reached except by assuming at the outset that the Legal-Tender Act was not necessary; that the public was not responsible for it; that the men who made it law were answerable to the people for their act, and are bound to show that so extraordinary and so grave a misfortune could, by no means, have been avoided. If they fail to prove their case, they are condemned. It is, too, a matter of the greatest consequence to decide what the ultimate judgment will be, since on it must turn not only questions of the most considerable material interests, but points of fundamental law in the United States, and of the theory of government for future time. The urgent necessity of establishing some fixed principles in regard to this disease of debased currency may be measured by the extent of the disease itself. Russia, Austria, Turkey, Italy, Spain, Brazil, Japan, and an indefinite number of smaller communities, besides the United States, have, to-day, no fixed standard of value in domestic exchanges. With rare exceptions, no government that has once debased its standard has ever restored it, except through the desperate resource of partial or entire repudiation. Unless the world is prepared to agree that society has no protection, and that the assumed progress of political science is a mere dream, there can be no excuse for continuing to accept as inevitable an evil which, in all times, has been merely the result of ignorance and misgovernment.

The law of legal tender, passed by Congress in February, 1862, cannot, therefore, be assumed to have been necessary, and its supporters are bound to prove that they had no alternative. To this task Mr. Spaulding, the principal author of the measure, has applied himself; while, on the other hand, Mr. Chase, without whose assent the law could not have passed, has assumed the contrary ground. There is, unfortunately, at the outset a strong presumption against the law, rising from the unquestionable fact that the men who, in 1862, were charged with the conduct of the finances, and were responsible for this law in particular, had no claim to confidence on the ground of their financial knowledge or experience.

Something better might indeed have been expected among a people so devoted to commerce and so habituated to self-government. Military disasters were to be looked for, seeing that the nation had no training nor taste for war; but though war, or art, or philosophy, or abstract knowledge, were beyond the range of public or popular interest, an experience of two hundred years ought at least to have insured the country against mistakes in practical politics. Such, however, was very far from the truth. Among the leading statesmen then charged with responsibility, not one was, by training, well fitted to perform the duties of finance minister, or to guide the financial opinions of Congress. The Secretary of the Treasury, certainly the most capable of the men then connected with finance, suffered severely under the disadvantage of inexperience. In the Senate, finance, like every other subject, was treated rather as though it were a branch of the common or constitutional law, than as though it were a system with established principles and processes of its own. But it was in the House of Representatives that the want of education was most apparent and most mischievous, while, by a significant coincidence, it happens that the law of legal tender, more than almost any other great financial measure of the Rebellion, was peculiarly and essentially the work of this House. As for the members who originated and whose activity carried through all opposition the act of February, 1862, it is difficult to characterize them in language which would not seem unduly and unreasonably severe. Yet it may honestly be doubted whether there has ever been a time since Kleon, the leather-seller, was sent by the people of Athens to command its armies at Sphacteria and Amphipolis, and since Aristophanes on the public stage covered the powerful popular leader with an immortal ridicule which surely reflected most severely on the Athenian people itself, — it may honestly be doubted whether history records an occasion when the interests of a great country in an extreme emergency have been committed to hands more eminently disqualified for the trust. In February, 1862, Mr. Thaddeus Stevens was chairman of the Com-

mittee of Ways and Means, from which emanates the ordinary financial legislation of Congress. To say that Mr. Stevens was as little suited to direct the economical policy of the country at a critical moment, as a naked Indian from the plains to plan the architecture of St. Peter's or to direct the construction of the Capitol, would express in no extreme language the degree of his unfitness. That Mr. Stevens was grossly ignorant upon all economical subjects and principles was the least of his deficiencies. A dogmatic mind, a high temper, and an overbearing will are three serious disqualifications for financial success, especially when combined with contempt for financial knowledge. It is no exaggeration to say, that every quality of his nature and every incident of his life which gave Mr. Stevens power in the House, where he was almost omnipotent in the legislation which belonged to the war and to reconstruction, conspired to unfit him for the deliberate and difficult discussions of finance. But it is not to Mr. Stevens that the principal burden of blame or praise for the financial legislation of that momentous year is to be awarded. In the press of business upon the committee, when in the brief space of a few months the whole system of loans, of taxation, and of currency, demanded by a war of such tremendous proportions, had to be created, so to speak, out of nothing, two sub-committees were formed to divide the duties which fell upon the committee. One of these, under the lead of Mr. Morrill of Vermont, undertook to enlarge and adjust the scheme of taxation to the new necessities of the government. The other, under the chairmanship of the Hon. Elbridge G. Spaulding of New York, assumed the care of the national currency, the raising of loans, and the issue of treasury notes or bonds. Mr. Stevens remained chairman of the whole committee, charging himself particularly with the matter of appropriations, and lending his powerful voice to both sections below him, as either by turn encountered opposition in forcing its measures through the House.

The intellect of a Congressman, gifted with no more than the ordinary abilities of his class, is scarcely an interesting or

instructive subject of study; nor are the discussions that arise among such men likely to be rich in stores of knowledge or experience. But when an accidental representative is able to carry "over the administration and through Congress,"* as Mr. Spaulding claims to have done, and as it is clear that Mr. Spaulding did, a measure of such far-reaching consequences as the Legal-Tender Act of 1862, the character of that person's mind and the facts of his life cease to be matters of insignificance. One may well inquire what sort of a man it was that could lead a nation so far astray, and what the condition of things that made it possible to effect results of such magnitude. Financiers who make an addition of hundreds of millions of dollars to the debts of their countries, representing not a penny of value enjoyed, are entitled to a place in history, whether they boast the intellectual capacity of Mr. Pitt or of Mr. Spaulding.

Unlike Mr. Stevens, Mr. Spaulding had the advantage or disadvantage of a certain sort of financial experience. He had been for a time treasurer of the State of New York. By profession he was, in 1862, president of a joint-stock bank at Buffalo, and it was on this circumstance that he based his chief claim to speak as an expert in finance. At the conference on the 11th of January, 1862, at the treasury, between the Secretary, the committees of Congress, and the representatives of the principal Northern banks, — a conference whose momentous importance will require close attention, — Mr. Spaulding expressed his convictions both "as a banker and legislator." The association of functions was not unimportant, and Mr. Spaulding was right in laying stress upon it. Had he not been a banker as well as a legislator, the Legal-Tender Act might, it is not improbable, never have been enacted. Being a provincial banker, and at the same time chairman of a subcommittee dealing with the nominally financial but really universal interests of thirty millions or more of citizens, and dealing, too, with the whole future of a nation whose develop-

* Mr. Spaulding's share in the passage of the Bill is described in these words by his colleague, Hon. T. M. Pomeroy, in a speech delivered in the House of Representatives on the 19th February, 1862.

ment no bounds seem to limit, Mr. Spaulding naturally proceeded to apply to the necessities of the situation the principles of finance which he had learned in shaving notes at a country bank.

These necessities were unquestionably serious, but few persons now retain any distinct recollection of their actual shape. To the minds of men living in 1870 the events of 1862 appear bound up in close connection with the long series of events that have intervened. The necessity of the Legal-Tender Act is now assumed, not on account of what had happened before the law was passed, nor on account of anything that was foreseen by its authors, but because of what afterwards occurred, the exigencies of a situation far more difficult and alarming than existed at that earlier time. Against such a confusion of ideas it is necessary that every candid man should be on his guard. The vague, general notion that, sooner or later, legal-tender paper was inevitable, is a part of the same loose and slovenly popular criticism with which the whole subject has been so habitually treated, and is scarcely worth comment; but the actual circumstances under which Congress declared the measure to be necessary are a matter of fact, and it is with these that law, history, and political science have first of all to deal.

Congress met on the 2d of December, 1861, and the Secretary immediately set before it an account of the financial situation, and his own scheme for supplying the wants of the treasury. He required about $200,000,000, in addition to resources already provided, in order to meet the demands of the next half-year. His immediate necessity was for $100,000,000 within three months. He estimated that the debt would reach $517,000,000 on the 1st of July, 1862, and that a year later it would probably become $900,000,000. In fact it rose to $1,100,000,000. A part of the heavy government expenses were to be met by taxation; a part by the sale of bonds; and for the rest Mr. Chase proposed the assumption by the government of the bank circulation, amounting to some $200,000,000, with a view not only of obtaining the money,

but of providing a sound currency on which to conduct the war. The Secretary did not, in this connection, overlook the possibility of resorting to a forced paper circulation, but "the immeasurable evils of dishonored public faith and national bankruptcy" deterred him from recommending the measure, or rather obliged him to reject it as dangerous and unnecessary.

Thus, on the 1st of December, 1861, according to the Secretary of the Treasury, no occasion existed for resorting even to the moderate measure of issuing government paper at all, except so far as concerned a possible guaranty to a new bank circulation. The idea of legal tender was expressly rejected. The government believed itself able to meet its demands on the basis of the bank circulation, provided Congress would place the bank circulation on an available footing. Nothing, however, was done by Congress towards supplying the wants of the treasury, until, towards the end of December, Mr. Spaulding began to draft a bill for establishing a national banking currency. While preparing this draft, Mr. Spaulding, "upon mature reflection, came to the conclusion that the bill could not be passed and made available quick enough to meet the crisis then pressing upon the government for money to sustain the army and navy. He therefore drafted a legal-tender treasury note section." This was done about the 30th December; and this was the origin of the measure destined to have so vast and permanent an influence on the American people. The "mature reflection" of Mr. Spaulding could discover no other or better method of supplying a temporary want of $100,000,000, than a resort to the last expedient known to finance; what he himself calls a forced loan, made in the first year of the war by means which were equivalent to a debasement of the standard of value and a bankruptcy of the government. It is scarcely necessary to add a comment upon this simple statement. Any reader in the least familiar with financial history must appreciate the extravagance of Mr. Spaulding's assumption. That he acted with perfect honesty and good intention no one will think it worth

while to dispute; but that he had the least conception of the consequences of what he was doing, or that he grasped even in a limited degree the principles of statesmanship, no unprejudiced or cool observer could imagine. Like all ignorant men, impatient of resistance or restraint, the moment he saw an obstacle, he knew but one resource, that of a blind and reckless appeal to force.

Mr. Spaulding then, "upon more mature consideration," converted this section into a separate bill, and laid it before his committee. The committee, however, was by no means unanimous in accepting Mr. Spaulding's views of necessity. It is true, and it is an interesting fact, that the only doubt entertained by Mr. Thaddeus Stevens was in regard to the constitutionality of the law; and one is somewhat at a loss whether most to wonder at the profound ignorance thus betrayed or at the constitutional scruples which suggested themselves to this veteran expunger of constitutions. But though Mr. Stevens and one half the committee approved the bill, the other half stood out firmly against it, and only as a matter of courtesy allowed it to be reported to the House.

On the 7th of January, 1862, the bill was reported. It authorized the issue of $100,000,000 in treasury notes, to be a legal tender, and exchangeable on demand for six per cent bonds. Public opinion at once became sharply divided on the merits of the measure. Delegates from the Boards of Trade and banks of the principal Northern cities appeared in Washington to oppose the bill, and on the 11th of January these gentlemen met the Secretary of the Treasury and the finance committees of the Senate and House, at Mr. Chase's office in the department. Here the whole financial policy of the government was made a subject of discussion, and the two paths between which the country was still at liberty to choose were marked out with unmistakable precision. Mr. Spaulding, on the one hand, insisted not only that his measure was the best, but that it was the only means of raising the money required, and he demanded to know what alternative could be suggested. On the part of the bank committees Mr. James Gallatin of

New York, submitted a complete financial scheme, and, with the plain common sense of a practical man, replied to Mr. Spaulding's inquiry with the simple proposal that the government should sell its bonds in the open market for what they would bring, without limitation of price. To this suggestion Mr. Spaulding made the following reponse : —

"The Sub-Committee of Ways and Means, through Mr. Spaulding, objected to any and every form of 'shinning' by government through Wall or State Streets, to begin with; objected to the knocking down of government stocks to seventy-five or sixty cents on the dollar, the inevitable result of throwing a new and large loan on the market without limitation as to price; claimed for treasury notes as much virtue of par value as the notes of banks which have suspended specie payments, but which yet circulate in the trade of the North; *and finished with firmly refusing to assent to any scheme which should permit a speculation by brokers, bankers, and others in the government securities, and particularly any scheme which should double the public debt of the country, and double the expenses of the war, by damaging the credit of the government* to the extent of sending it to 'shin' through the shaving-shops of New York, Boston, and Philadelphia. He affirmed his conviction as a banker and legislator, that it was the lawful policy as well as the manifest duty of the government, in the present exigency, to legalize as tender its fifty millions issue of demand treasury notes, authorized at the extra session in July last, and to add to this stock of legal tender, immediately, one hundred millions more. *He thought that this financial measure would carry the country through the war, and save its credit and dignity.* At the same time we should insist upon taxation abundantly ample to pay the expenses of the government on a peace footing, and interest of every dollar of the public obligation, and to give this generation a clear show of a speedy liquidation of the public debt."

Before commenting further upon this speech, it is necessary to mark with care the fact that, throughout the whole legal-tender contest in 1862, there was no question involved but that of *resource*. The sum of one hundred million dollars was wanted to carry on the government, and Mr. Spaulding closed every mouth by asking how else the money could be raised, since the banks could provide no more coin and their paper would not properly answer the purpose. At this time there

was no thought of any ulterior process of "floating the bonds," which became the ultimate function of the legal-tender paper, and indeed this argument, which implied an intentional depreciation of the paper, would in 1862 have scarcely worked in favor of the bill. How little weight was put on the idea of "making money easy" is evident from the whole debate, but so far as Mr. Spaulding is concerned, the following letter, written on the 8th of January, 1862, is a sufficiently clear statement: —

"Dear Sir, — In reply to yours of the 4th instant, I would say that the Treasury Note Bill for $ 100,000,000 agreed upon in committee yesterday is a measure of *necessity* and not one of *choice*. You criticise matters very freely, and very likely you may be right in what you say. We will be out of means to pay the daily expenses in *about thirty days*, and the committee do not see any other way to get along till we can get the tax-bills ready, except to issue temporarily treasury notes. Perhaps you can suggest some other mode of carrying on the government for the next one hundred days. . . . . It is much easier to *find fault* than it is to suggest *practicable means or measures*. We must have at least $ 100,000,000 of paying means during the next three months, or the government must stop payment. . . . . I will thank you to suggest a better *practicable* mode of getting $ 100,000,000 of paying means during the next three months. I would be glad to adopt it, and the committee would be glad to adopt it. Let us have *your specific plan* for this purpose, one that will produce the money, and we will be very much obliged to you."

This curious letter, which, strange to say, Mr. Spaulding has actually published, italics and all, as a meritorious document, tells the whole story of the legal tender in its origin. As a specimen of American finance and congressional ability it will live in history. It presents the view on which, then as now, the adherents of this measure have always wished to place it before the public, — as the only alternative to the immediate stoppage of government. Not as a means of supplying currency, nor of easing the money market, nor of "floating" bonds, was the legal-tender paper first created, but solely to supply a temporary want of $ 100,000,000, without which the treasury must stop payments. And Mr. Spaulding flung

into the face of every doubter his contemptuous request to suggest some better mode of raising the money, or in future to keep silence.

Three days after this letter was written, Mr. Gallatin, on the part of the New York banks, replied to Mr. Spaulding's entreaties by the simple and business-like remark of a man who knew what he was talking about, that it was only necessary for Mr. Chase to sell his bonds at their market value, and obtain what money he wanted. To this suggestion Mr. Spaulding was called upon for a rejoinder. Obviously he was bound to show that Mr. Gallatin was mistaken; that no such alternative really existed; and that it was, for some reason or other, impossible to sell the government bonds in the way proposed. In the speech which has just been quoted Mr. Spaulding did undertake to answer Mr. Gallatin, but he took no such ground as this. He did not deny the efficacy of the proposed measure. He did not even question the fact that the resource suggested was both simple and easy. He only appealed to the dignity of the government.

It appears, therefore, that there was an alternative to legal tender, in spite of Mr. Spaulding's assertions that there was none. What this alternative consisted in will be discussed in a moment; but as the point is most material in the argument, it will be well to establish here beyond dispute the fact that the existence of this alternative was acknowledged by the supporters of the bill almost in the same breath with which they declared legal tender to be a necessity. In his speech of the 28th January, on introducing the bill in the House of Representatives, Mr. Spaulding said: —

"The bill before us is a war measure, a measure of *necessity*, and not of choice. . . . . *We have the alternative* either to go into the market and sell our bonds for what they will command, or to pass this bill. . . . . If you offer to the people and put upon the market $300,000,000 to the highest bidder in the present state of affairs, they would not be taken except at ruinous rates of discount. . . . . I fear the twenty years six per cent bonds would under the pressure fall to 75, 70, 60 and even 50 cents. . . . . Why, then, go into the

streets at all to borrow money! I prefer to assert the power and dignity of the government by the issue of its own notes."

Mr. Hooper, who was second on Mr. Spaulding's committee, said: —

"The propositions of committees from boards of trade and banks, which recently visited Washington, differed from the theory of this bill so far as to require that . . . . the government bonds must first be disposed of, and the money received for them paid to the contractors. . . . . The obvious effect of such an arrangement would be to put the reins of our national finances in the hands of the banks. . . . . *To render the government financially more independent*, it is necessary to make the United States notes a legal tender. *It is possible that they would become a practical tender without providing for them to be a legal tender.*"

The alternative, therefore, as seen by Mr. Hooper, was not between legal tender and a stoppage of payments, but between legal tender and dependence on the banks. Mr. Bingham's idea of necessity was only a little more ridiculous: —

"Great names," said Mr. Bingham, "have been invoked [against legal tender] in this debate. For what purpose? For the purpose of laying at the feet and at the mercy of brokers and hawkers on 'Change, the power of the people over their monetary interests in this hour of their national exigency."

Mr. Thaddeus Stevens, again, had views of his own in regard to the meaning of the word "necessity": —

"This bill," said he, "is a measure of necessity, not of choice. . . . . *Here, then, in a few words lies your* CHOICE. Throw bonds at six or seven per cent on the market between this and December enough to raise at least $600,000,000, or issue United States notes. . . . . I maintain that the highest sum you could sell your bonds at would be seventy-five per cent, payable in currency itself at a discount. That would produce a loss which no nation or individual doing a large business could stand a year."

Senator Sherman also used the word "necessity" in a sense which would have been ludicrous if the subject had concerned the metaphysical doctrine of fate and free will: "We must no longer hesitate as to the necessity of this measure. That necessity does exist, and now presses upon us. I rest my vote

upon the proposition that this is a necessary and proper measure *to furnish a currency.*" A more amusing example of anti-climax than this is seldom seen in rhetoric.

It would be pleasant to linger over this subject, and enjoy among these apparently tedious speeches the delicate touches of involuntary humor which a critic finds so difficult to resist, but it is useless to accumulate evidence of a point that is self-evident; and it is unquestionable that even the strongest supporters of the bill did not in any true and absolute sense maintain that legal tender was necessary, but only that it was preferable to the process of selling bonds at a discount and retaining the old bank currency. The next step, therefore, must lead to some closer discussion of this opinion, and of the financial principles by which its justice can alone be tested.

Finance is a subject which the liveliest writer may well despair of making popular, since the mere sight or suspicion of it is alone enough to cause every reader, except the dullest, to close the most promising volume. A writer, therefore, can have no hope of gaining a general hearing on such a topic. Rarely can he expect sympathy among even business men, unless he adopts the views they hold. Yet notwithstanding this, it is and will remain true, and not only true but interesting, that in the large experience of modern nations, some few solid principles in finance have been established too firmly to be shaken; and whether or no busy politicians or local bankers choose to believe them, and whether or no the ordinary reader choose to listen to them, the principles are sound and will hold.

Hitherto in human history, the mind of man has succeeded in conceiving of but two means by which governments can obtain money. One of these is, to take. The other is, to borrow. The hybrid and self-contradictory notion of a forced loan resolves itself ultimately into one or the other of these conceptions, and as a permanent policy is impossible. In practice, where a government does not take, it must borrow.

Almost all modern nations are, to a greater or less extent,

habitual borrowers so far as their governments are concerned, and therefore it is natural that, during two hundred years of experience, the principles which regulate loans should have been studied with some care, and simplified in some degree into a science. After innumerable costly experiments and elaborate study of the interests and motives of lenders and borrowers, the effect of complicated financial schemes and special pledges and conditions, it seems to be now acknowledged by the shrewdest governments that the simplest bargain is the best for the public, and that all financial tricks and devices, all attempts to coax or deceive capitalists into better conditions than they are ready to offer, in the end injure only the government and the public. Simplicity has, therefore, of late years been carried by the great borrowing nations to a degree of scientific perfection beyond which there seems to be no possibility of passing. According to this principle, governments now sell their own credit without stipulation, reserve, or condition. They sell, for example, their simple promise to pay a thousand dollars a year so long as it is demanded. To this promise no condition, expressed or implied, is attached, except that the payment of a nominal principal may at any time discharge the debt. For this promise they obtain whatever they can, and experience has proved that, in the competition of the world, the bargain thus struck is for both parties the fairest.

Another simple law has also been established, and this is that lenders will always prefer and pay most for a security on which there is a certainty of permanence or a chance of profit, other things being equal; that is to say, that a security is relatively less valuable as it approaches its par and its redemption than it should be, judging from the price paid for an exactly similar security which has a better chance of permanence or a wider limit of possible profit. The English 3 per cents at eighty would commonly have a marked advantage in the markets over $3\frac{1}{2}$ per cents; in the first place, because the margin of possible profit would be greater, and in the second place, because there would be no prospect of disturbance in

the one case, while in the other redemption would be near at hand. Experience, therefore, shows that governments as a rule obtain relatively a low price for a security which they insist upon selling at par.

This obvious fact induces most governments to adapt their offer to the market in such a way as to combine these inducements. If the market rate of interest is at 4 per cent, they commonly offer 3½ or 3 per cent, and thus dispose of their credit at a discount on better terms than if they attempted to outbid the market rate. The American government, on the other hand, has commonly pursued a different course. While insisting that it will borrow only at the market rate, that is, at par, it has found itself compelled to concede something in order to be allowed to borrow at all. In the first place it has to concede a high rate of interest, but even this is not enough. Lenders require permanence. It accepts, therefore, the condition that it shall not attempt to redeem its bonds until after the lapse of a term of years, — five or ten, or whatever may be agreed upon. The expedient is clumsy, but the ignorant prejudice against usury compels its adoption, although, like all such devices, it works in practice only against the public interest and in favor of the capitalist. Another condition, however, to which the United States government is in the habit of pledging itself is entirely gratuitous. This is the obligation to redeem after a certain number of years, — an obligation which works wholly against the public interest, and which is without excuse on financial grounds, although the incessant enforcement of a temporary character in the national debt is considered its excuse from a political stand-point.

Every established principle of finance, therefore, indicated that government credit could be sold to more advantage at a certain nominal discount than if a higher interest or any equivalent condition were insisted upon in order to "float" it at par. If, therefore, the government had chosen to authorize the sale of six per cent bonds at their market price, omitting from the contract all restriction on its own free control over them, it would have done precisely what all established finan-

cial rules enjoin, and for such bonds it would unquestionably have obtained the best terms which were then to be had, while at the present day the nation would have owed a homogeneous debt, with which it would have been free to deal as it chose. Mr. Spaulding, however, apparently imagined that he had discovered some new principle in finance, by which the government might raise money through a process which should be neither taxation nor loan. Before three years had passed the government was selling its six per cent bonds at a rate equivalent to very nearly thirty-five cents on the dollar; but at this time the idea of its credit selling at a discount of twenty or thirty or forty per cent was so revolting to Congress that it was not even to be entertained. Mr. Gallatin talked in vain. Nor was it Mr. Spaulding and members of Congress alone who were extravagant on this theme. At least one gentleman who should have known better, — Mr. Moses H. Grinnell of New York, — encouraged the same delusion. "As for G[allatin] and a few egotistical gentlemen that act with him, they should be driven out of Washington, as they only embarrass the government. There are not eight bank presidents that side with G[allatin]. He is an odd fish, — has very little influence here." These were the terms used by Mr. Grinnell in a letter dated the 30th January, 1862, and it was a curious sign of the times that the only man who seems to have had a clear and practical knowledge of what the occasion required should have really been "an odd fish."

But it is not enough to show that this idea about "shinning" through Wall Street was almost inconceivably absurd, seeing that every government always does and always must borrow on the best terms it can get, or not borrow at all, in which case it can have no resource but to tax. The event soon showed that the men who treated so contemptuously the idea of the nation's credit being sold at a discount were the first to convert this same legal-tender paper into the instrument by which the government was to "shin," not only through Wall Street during the short emergency of the war, but through every lane and alley of the land during a period

that now seems interminable. Congress and the government followed Mr. Spaulding's doctrine, that the nation's credit must not be sold at a discount, and the result was that, as the laws of society are inflexible, while the laws of Congress are not omnipotent, there ensued a period of "shinning" which has seldom had a parallel. The dollar which Congress had set up was "shaved" through Wall Street at twenty, thirty, forty, fifty, and sixty cents discount. Europe bought the United States six per cents at about thirty-five cents on the dollar, notwithstanding Mr. Stevens's asseverations that no nation could afford to borrow at seventy without being ruined in a year. But if Mr. Spaulding and his friends could have foreseen, not only that the government would be compelled to perform this process of "shinning" during four long years, but that, thanks to them and to them alone, the government credit and its broken promises-to-pay would for years longer be hawked about Wall Street at whatever price they could command, and would become the support by which Mr. Jay Gould and Mr. James Fisk, Jr., and their like, would succeed in bolstering up their scandalous schemes against the pressure of sound economical laws, the statesmen of 1862 might perhaps have gained more sensible ideas in regard to the treatment of government credit.

In justice to the Secretary of the Treasury, it must be said that, on the day of the conference, he showed no symptom of yielding to Mr. Spaulding's influence. He remained then as before hostile to the principle of legal tender, and before the bank delegates left Washington he succeeded in agreeing with them upon a new financial arrangement which included the adoption of his policy in regard to the bank currency, and rejected the resort to legal tender. Nor would it perhaps have affected the success of his scheme, that Mr. Spaulding and his committee deemed it inadequate and withheld their assent. There was a different reason than this, which caused the compromise between Mr. Chase and the banks to fail. The gentleman who represented the Boston banks on that occasion found on his return to Massachusetts that the arrangement he had

made was not satisfactory to them, and he at once telegraphed this information to the Secretary. Then for the first time Mr. Chase yielded his better judgment, and, relying on his own power and will to control the issues, accepted the policy of legal tender, for which Boston influence thus became immediately answerable. Having once made his determination to adopt the policy, the Secretary was not a man to hesitate in carrying it out. He had been drawn into it against his most deeply rooted convictions and his better judgment, but no sooner was the decision made than he threw his whole weight in favor of the bill.

Thus, in spite of the treasury and the banks and the active remonstrances of a great part of the community, the bill came before the House of Representatives as a government measure. Two months of delay and confusion had seriously complicated the difficulties of the case, but even yet no necessity existed which could in any just sense be considered to exact the adoption of legal tender. The cry of necessity was indeed raised, and prolonged without a pause, but it was raised merely because no solid argument could be found. The ablest members of Congress denied the necessity without qualification, and, as has already been shown, the ideas of necessity held by the different supporters of the bill were almost as various as the speeches.

The debate began on the 28th of January, by a speech from Mr. Spaulding, in which he explained at considerable length his reasons for forcing on the country a measure which was so generally obnoxious. There seems to be something almost extravagant in so often recalling attention to Mr. Spaulding's speeches, which have little intrinsic claim to notice. But Mr. Spaulding was at this moment in a position of vast responsibility. His activity and persistence had carried the bill "over the administration," and were now to carry it through the House. It is not easy, therefore, to set him aside as a person of no consequence, or to pass his opinions by as undeserving of attention; and indeed, however open to criticism these opinions may have been, Mr. Spaulding has a perfect right to

claim that they were little if at all inferior in merit to those expressed by the other friends of the bill. It is true that if any object were to be gained by reviewing this ground, if it were intended to conciliate support for new opinions, or to lay down principles for a new party, it would be well to speak in milder terms of men whose power and authority have not yet passed wholly away. But the only inquiry that can have value here is to ask how the future historian will be compelled to treat this chapter of American history; and, unless the world is to move backward, it seems as though he must inevitably declare that not all the campaigns of all the unfortunate or incompetent generals employed during the Rebellion can furnish an instance of grosser mistreatment than was offered by Congress in these debates. The good sense and high moral standard of a few men served only to relieve and make more conspicuous the dark and impenetrable cloud of ignorance against which their efforts were utterly thrown away. This language is no doubt strong, but it is strictly true. It would, for example, have been difficult for any human being to compress within the same limited space a greater number of mistaken ideas than are contained in the following extract from Mr. Spaulding's speech of January 28th: —

"The bill before us is a war measure, a measure of necessity, not of choice. . . . . Congress may judge of the necessity in the present exigency. It may decide whether it will authorize the Secretary of the Treasury to issue demand treasury notes, and make them a legal tender in payment of debts, or whether it will put its 6 or 7 per cent bonds on the market, at ruinous rates of discount, and raise the money at any sacrifice the money-lenders may require, to meet the pressing demands upon the treasury. In the one case the government will be able to pay its debts at fair rates of interest; in the other, it must go into the streets *shinning* for the means, like an individual in failing circumstances, and sure of being used up in the end by the avarice of those who may exact unreasonable terms. But, sir, knowing the power of money, and the disposition there is among men to use it for the acquisition of greater gain, I am unwilling that this government, with all its immense power and resources, should be left in the hands of any class of men, bankers, or money-

lenders, however respectable or patriotic they may be. The government is much stronger than any of them. Its capital is much greater. It has control of all the bankers' money and all the brokers' money, and all the property of the thirty millions of people under its jurisdiction. Why then should it go into Wall Street, State Street, Chestnut Street, or any other street, begging for money? Their money is not as secure as government money. All the gold they possess would not carry on the goverment for ninety days. They issue only promises to pay, which, if Congress does its duty, are not half as secure as United States treasury notes based on adequate taxation of all the property of the country. *Why, then, go into the streets at all to borrow money?* I am opposed in our present extremities to all shifts of this kind. I prefer to assert the power and dignity of the government by the issue of its own notes."

He would be a bold man who should undertake to say that these remarks can, by any process of explanation, be made intelligible. The conclusion, however, is clear enough, and is well worth attention. Had Mr. Spaulding's studies ever led him to read Goethe's Faust, he might at this point have recalled the scene where Mephistopheles, in the character of court-jester, invents for the empire a legal-tender currency based on the firm foundation of old treasures which in past ages might have been hidden underground, and applauds his own creation as better than coin, because, if the bankers refused to give coin for it, the holder would at worst have only the trouble of digging. The great satirist, however, with all his genius, was not so great a satirist as Mr. Spaulding. He never thought of carrying the bitterness of his sarcasm so far as to invoke the *dignity* of the empire as the chief glory of his paper money, and yet Mephistopheles closes his scene with the exulting exclamation: —

"Wer zweifelt noch an unsers Narren Witz!"

Yet one thing remains to be said before quitting Mr. Spaulding. If he really had an idea in his own mind, and sincerely believed that the government need not go into the streets at all to borrow money, and that a simple assertion of its own dignity would place it in command of indefinite resources; in other words, if he thought that the dignity of the government

forbade its borrowing, except on its own terms, and that there was no necessity for it to borrow at all, it is a matter of grave question how he can justify himself in having consented that the government should pay 6 per cent or even 1 per cent for money, or should promise to repay any money whatever.

The argument of Mr. Hooper was less extravagant. He avoided committing himself to anything except to a cautious opinion that the paper issue would make the government financially more independent, and that if Mr. Chase were discreet, the quality of legal tender would help him to keep the notes at par. The latter opinion may, perhaps, be questioned, and indeed Mr. Chase has himself questioned it in his late judgment, but at least it was not absurd.

Mr. Bingham, however, rivalled Mr. Spaulding, though in different way. His speech was necessarily made without reference to financial principles, since Mr. Bingham made no pretence to the slightest acquaintance with that subject. He therefore assumed at the outset that the bill was necessary, because it was said to be necessary, and he then burst into a brilliant denunciation of all persons who refused to believe in the necessity. Mr. Roscoe Conkling was the victim first immolated.

"Sir, said Mr. Bingham, "as a representative of the people I cannot keep silent when I see efforts made upon this side of the house and upon that, to lay the power of the American people to control the currency at the feet of brokers and of city bankers, who have not a tittle of authority, save by the assent or forbearance of the people, to deal in their paper issued as money. I am here to-day to assert the rightful authority of the American people as a nationality, sovereignty, under and by virtue of their Constitution."

Such legal finance would not call for notice, except that it came from a leader in Congress, who, in order to protect the sovereignty of the American people from bankers and brokers, insisted upon creating a legal-tender paper currency, which has always been and always will be the most efficient instrument ever yet discovered for the worst purposes of this very class of men. Yet Mr. Bingham denounced his opponents for act-

ing with the purpose of sacrificing the public interest to the interest of bankers and brokers. At the same time it is mortifying to observe the ignorance and vulgar prejudice with which the bankers and brokers of the country were always mentioned in these debates. Perhaps no other single characteristic offers so much instruction as this simple fact, in regard to the temper and the range of thought exhibited in this momentous discussion. Mr. Bingham's remarks have already been quoted. Mr. Stevens, with his usual nice discrimination, characterized the dealers in money as "sharks and brokers," to which he afterwards added "harpies." Mr. Shellabarger, after appropriating bodily and almost literally several pages of Macaulay's most luminous and most familiar writing, in the effort to maintain himself on Macaulay's level without Macaulay's aid, could discover no more original idea for his peroration than to denounce the outside opposition to this bill as coming from interested persons in the expectation "that out of the blood of their sinking country they may be enabled to coin the gains of their infamy." Senator Wilson announced that the practical question lay between "brokers and jobbers and money-changers on the one side, and the people of the United States on the other." Invective like this properly belongs only to a debating-club of boys. But if invective were to be used at all, and if these bankers had been represented in Congress by any person capable of using it, he might easily have retaliated in a manner which would have left little opportunity for an effective rejoinder. He might have replied that men who claim to be trusted for all they say in regard to a financial exigency; who assert in one breath that a necessity exists, which in the next breath they acknowledge does not exist; who presume on this utterly unwarrantable plea of necessity to exculpate themselves from what, without exculpation, is the wickedest vote the representative of the people can ever give; a vote which delivers labor to the mercy of capital; a vote which forces upon the people that as money which in no just sense is money; a vote which establishes as law one of the most abominable frauds which law can ever be prosti-

tuted to enforce; — that such men are not the persons to judge of others' patriotism, honesty, or good sense.

And here it may be proper to add a remark as to the disposition of Congress to stumble over constitutional difficulties. A very large part of the debate turned on the point of technical construction of the Constitution; and many members of the legislature who hesitated about nothing else found an insurmountable obstacle here. The constitutional argument, whatever its weight may be, is one on which only lawyers will be likely to insist. Whether, under a strict interpretation of constitutional powers, the law of legal tender is to be justified or not, can make but little difference to persons who look for their principles of action beneath the letter of the Constitution, to the principles upon which all government and all society must ultimately rest. The law of legal tender was an attempt by artificial legislation to make something true which was false. This is the sum-total of the argument against legal tender, and this argument is based on the eternal maxim that the foundation of law is truth. If it is possible for the rhetoric of congressional orators or the ingenuity of professional lawyers to reduce the principle involved to simpler elements than this, at all events neither the debates at the Capitol nor the arguments at the bar, however brilliant or elaborate they may have been, have as yet shown any probability of success.

It would be pleasant to extract from the speeches delivered in favor of this bill any such portions as show depths of knowledge, elevation of morals, or breadth of mind. Unfortunately nothing of the sort exists. Almost all the soundest minds in the House declared themselves against legal tender and denied its necessity. Judge Thomas of Massachusetts and Mr. Roscoe Conkling of New York, Mr. Morrill of Vermont, from the Committee of Ways and Means, Mr. Horton of Ohio, also of the Ways and Means, all the Democratic members, and others who contented themselves with a silent vote, opposed the legal-tender clause. And by some freak of nature, which seems occasionally to amuse itself with putting into the mouths of

extreme and violent men language and argument which express the most elevated sense of fitness, the speech of Mr. Owen Lovejoy of Illinois was in its short space as clear, as vigorous, and, from a rhetorical point of view, as perfect, as the oldest statesman or the most exacting critic or the deepest student of finance could have hoped or wished to make. But although the opponents of the measure were far superior in intellect to its supporters, and although their arguments were essentially sound, and under ordinary circumstances would probably have proved successful, they could not deal with the authority of the executive, which Mr. Chase now used with all his energy in favor of the bill. On the 6th of February Mr. Spaulding pressed his measure to a vote, and it passed the House by a majority of 93 to 59.

One can scarcely resist the conclusion that, had the bill originated in the Senate, and been discussed without the prejudice arising from the responsibility of rejecting what was approved by the House and urged by the Executive, and had it been acted upon before so much valuable time had been lost, the country would probably for the time have been spared the great misfortune of its adoption. This opinion is rendered probable by the higher and more statesmanlike spirit in which the Senate discussed the proposed measure. If it were possible that a mere word of unqualified admiration could please the ear or help to soothe the rest of a statesman whose loss the nation has regretted but has never fairly appreciated, there would be a keen and personal pleasure in repeating the language of Mr. Fessenden, who reported this bill to the Senate: —

"The question after all returns: is this measure absolutely indispensable to procure means? If so, as I said before, necessity knows no law. What are the objections to it? I will state them as briefly as I can. The first is a negative objection. A measure of this kind certainly cannot increase confidence in the ability or integrity of the country. . . . .

"Next, in my judgment, it is a confession of bankruptcy. . . . .

"Again, say what you will, nobody can deny that it is bad faith . . . . and encourages bad morality both in public and private. . . . .

"Again, it encourages bad morals, because if the currency falls (*as it is supposed it must, else why defend it by a legal enactment*), what is the result? It is that every man who desires to pay off his debts at a discount, no matter what the circumstances are, is able to avail himself of it against the will of his neighbor who honestly contracted to receive something better.

"Again, sir, necessarily as a result, in my judgment, it must inflict a stain upon the national honor. . . . .

"Again, sir, it necessarily changes the value of all property. . . . .

"Again, sir, a stronger objection than all that I have to this proposition is that the loss must fall most heavily upon the poor by reason of the inflation."

He concluded by declaring that in his opinion the legal-tender clause was not necessary, and he reported several amendments. One of these, the second, he described in these terms: "The committee . . . . give to the Secretary the power to sell the bonds of the government at any time that it may be necessary, at the market price, in order to raise coin. *That can always be done.*" This amendment was ultimately adopted and became part of the bill, but the Secretary preferred reaching the same result by a different policy, and the old system was therefore retained.

But it was reserved for Mr. Collamer of Vermont to take yet stronger and more uncompromising ground. "Even if it was a *necessity*," said he, "I would not vote for this measure." Fidelity to a trust is not so universal that one might not be permitted to sympathize with a man who, when placed between the alternatives of utter destruction on the one hand and what he thinks a breach of trust on the other, in spite of necessity still maintains the standard of his personal honor. But there was in reality no such bravado in this declaration of Judge Collamer's. It was not mere impracticability that prompted his resistance, but a superior discernment that the evidence of necessity which imposes on a legislative body in times of panic is not to be trusted. Even on a calculation of chances, it is far more likely that other resources are available than that so desperate an expedient should offer the only hope of salvation. Nay, a measure which in itself is inherently and

irredeemably wrong cannot in any just sense be a necessity. Mr. Collamer's speech, therefore, was only an energetic expression of his resolution, not that he would refuse to obey necessity, but that he would refuse to believe it.

The position taken by Mr. Sumner wanted only the same defiant confidence in the eternal laws of truth to have made it still more impressive than any of the others. Unhappily, by the side of Mr. Fessenden and Mr. Collamer, his conclusions seemed tinged with irresolution : —

"And now, as I close, I will not cease to be frank. Is it necessary to incur all the unquestionable evils of inconvertible paper, forced into circulation by act of Congress, — to suffer the stain upon our national faith, — to bear the stigma of a seeming repudiation, — to lose for the present that credit which in itself is a treasury, — and to teach debtors everywhere that contracts may be varied at the will of the stronger? Surely there is much in these inquiries which may make us pause. . . . . It is hard, very hard, to think that such a country, so powerful, so rich, and so beloved, should be compelled to adopt a policy of even questionable propriety. . . . . Surely we must all be against paper money, — we must all insist on maintaining the integrity of the government, — and we must all set our faces against any proposition like the present, except as a temporary expedient rendered imperative by the exigency of the hour. . . . . Others may doubt if the exigency is sufficiently imperative, *but the Secretary of the Treasury does not doubt*. . . . . Reluctantly, painfully, I consent that the process should issue."

The authority of the Secretary of the Treasury overruled the scruples of the Senate, and the bill passed by a majority of five votes on the legal-tender clause. It is scarcely worth while to carry the scene back to the House, in order to ascertain the fate of the Senate amendments, or to cull from the second debate new subjects for quotation. It is easy, only too easy, to ridicule and satirize the doctrines of public men, and something like an apology to the public is due for the extent to which this appetite has been indulged in these pages. It is but just to add that Mr. Spaulding at least did strongly and invariably insist upon the difference between legal-tender notes that were fundable and the later issue of greenbacks which

were not so. In point of fact the difference was very slight. There was nothing in the condition of fundability which made legal tender anything but legal tender, nor would the principle of legal tender have been any sounder, even though it had been attached to the bonds themselves. It is amusing to notice that, as the later issues of legal tender were made, and the depreciation became excessive, Mr. Spaulding by similar steps became virtuous, until at last his virtue grew intense. He attributed the failure of his favorite financial scheme to the mistakes of others, and he proposed as an infallible cure a restoration of his funding proviso. There is little probability that Mr. Spaulding's mind will ever succeed in gaining a higher stand-point than this, or will ever look over a wider horizon where it can more broadly measure the uncontrollable power of the elements which he, like the unlucky companions of Ulysses, ignorantly set free.

Such was the history of the legal-tender bill. So far as any evidence of its necessity can be drawn from the action of the Executive at the time, the late decision of Chief Justice Chase has left no doubt as to the facts. That Mr. Chase should, as Secretary of the Treasury, have adopted the course he did was doubly unfortunate: in the first place, because he created legal tender; and in the second place, because when the delusion was over, and his mind reverted to its first sound principles, the action he had taken as Secretary of the Treasury remained in the public memory to reduce the authority of the opinions he was bound to express as Chief Justice. Into the legal correctness or political propriety of these opinions it is no purpose of this essay to enter. No one who holds strong convictions against legal tender as a measure of finance is likely greatly to trouble his mind with the question whether such a power has or has not been conferred by the Constitution upon Congress. Though it were conferred in the most explicit terms language is capable of supplying, there could be no excuse on that account for changing an opinion as to its financial merits, and its financial merits are not a subject for lawyers, nor even for judges, as such, to decide. These hap-

pily rest on principles deeper than statute or than constitutional law. They appeal to no written code, and whenever the public attempts to overrule them, the public does so only at its own peril.

There remains but one more point to touch. The common impression undoubtedly is, that even though there were no actual necessity for a law of legal tender so early as February, 1862, yet at some subsequent time the enactment of such a law would have proved inevitable. This opinion should properly form the subject of a separate paper. If it be once acknowledged that the law of February, 1862, was unnecessary and passed by a practical fraud, the whole condition of the argument is changed. Whenever the public has reached this point, it will be time to enter upon the wider field of discussion into which so vague and general a proposition must lead. Yet, without venturing at present on any absolute denial of the theory, since this would require much explanation and reasoning, it is only fair to say that, although the subject is scarcely capable at present of positive demonstration, there is absolutely no evidence to prove that the government might not have carried the war to a successful conclusion without the issue of a single dollar of its legal-tender paper. Such appears to be the opinion of the Chief Justice, as it is undoubtedly the natural inference from economical principles.

It is, however, true that after the first issues of the paper, its original purpose and importance as a resource against a temporary exigency — that purpose which had been so discreditably used in forcing the bill through Congress — was almost wholly lost from sight, and the paper assumed entirely new functions as a financial instrument.

The government, adhering to the policy of selling its bonds only at par, was obliged to consider its paper as the par standard, and the next step was to issue of its own accord enough paper to "float" the successive loans. This was equivalent to selling its credit at the market price, with the addition of voluntarily degrading its own standard of value. In order to protect the nation's credit from degradation in the hands of

bankers and brokers, the government undertook to dishonor it of its own free will. As a financial policy, this tortuous and disreputable expedient will not bear a moment's examination; but there was one incidental function of the paper, closely connected with this, on which more stress may be laid. The issue of paper money in large quantities does produce a temporary and feverish excitement, which, during a certain length of time, may facilitate borrowing, though at a frightful ultimate cost. If the sole object of the legal tender were to cause this temporary stimulus, and if this stimulus can be proved to have been essential to financial success, the management of the nation's financial affairs during the war may admit of excuse if not of praise. Unfortunately, neither of these conditions can be established.

This essay aims at no advocacy of any financial nostrum, nor at any cure of present difficulties. In the popular humor of the moment, it is more than ever doubtful whether any advice that is wise would be listened to, or whether any advice that has a chance of being listened to could possibly be wise. Mere knowledge has no hold upon political power in its treatment of this subject. Other considerations are supreme both in Congress and in the public mind. But although knowledge, and the application of simple truth in politics, are for the present divorced from power and no longer control the course of current events, yet at least the past belongs to them as their exclusive property, and no one can prevent the past from receiving, sooner or later, the judgment which historical criticism must inevitably exact for the betrayal of principles to which it pretended allegiance.

# THE RAILROAD SYSTEM.*

## CHAPTER I.

### THE ERA OF CHANGE.

UPON the 7th of August, in the year 1807, Robert Fulton, with his little party of anxious and doubting guests on board the "Claremont," cast off from the piers of New York, and the waters of the Hudson were first troubled by the strokes of the steam-paddle. There are few Americans at least who have not lingered over the story and shared in the excitement of that famous voyage; — dwelling upon its every detail from the moment the clumsy little steamer — big with the fate of commercial marines and of navies — left her wharf at New York, until the steeples of Albany shone in the distance.

Twenty-two years later the corollary to this great event was worked out in England. Popular biographers have made the world even more familiar with the incidents of this second memorable day than are Americans with the story of Fulton's voyage. On the 6th of October, 1829, George Stephenson, an ex-stoker and a graduate of the coal-mines of Northumberland, but withal one of the most vigorous intellects which England, rich as she has been in that class of products, has ever given to the world, — upon that day Stephenson drove his little experimental locomotive "The Rocket" from Man-

* By CHARLES F. ADAMS, Jr. Much of the material used in the preparation of this paper originally appeared in the following articles in the North American Review: The Railroad System, April, 1868; Railroad Inflation, January, 1869; Railroad Problems in 1869, January, 1870; The Government and the Railroad Corporations, January, 1871.

chester to Liverpool and back. "The Rocket" weighed only four tons and a quarter, but Stephenson showed that it could move at a rate of thirty miles an hour, and upon that day the modern railroad system was born.

At exactly the same time, in this country, the Cumberland Turnpike and its construction was a fiercely agitated political question. It was part of a great system of internal improvements then contemplated; and, in identifying himself with it, Henry Clay doubtless thought that he had imperishably connected his memory with a monument more enduring than bronze, — with the Appian Way of America. The ambition was an honorable one; all human experience justified his faith in the permanence of the foundations upon which he rested it. From a period long before the Christian Era down to the year 1829 there had been no essential change in the system of internal communication. At present, before another half century has yet elapsed, the Cumberland Turnpike is as antiquated as the Appian Way, — as useful, perhaps, but far less interesting.

As to the railroad system, it long ago became impossible exactly to compute the number of miles contained in it or the millions of capital which its construction had cost; it is very difficult upon either of these points to arrive at conclusions even approximately correct. Neither where the attempt is made is the result at all encouraging. The mind fails to grasp propositions of such magnitude; the mere piling up of numbers conveys no new idea. For present purposes it may, in round numbers, be said that in 1870 there were about 125,000 miles of railroad in the two hemispheres, constructed at an average cost of little less than $100,000 per mile, and thus representing hardly less than twelve thousand million dollars of invested capital. All this has grown out of the thirty-two miles of road alone in existence just forty years ago.

These figures are certainly sufficiently startling; but, large as they are, they are increasing at a constantly accelerating rate. Thirty years ago in this country we constructed annually some 500 miles of road; twenty years ago this amount

had increased to 1,500, and as recently as ten years ago, it had scarcely reached 2,000; now we build 6,000, and in the year 1871 it is stated that enterprises involving 20,000 miles of road and eight hundred million of dollars are simultaneously going forward to completion.

Though this material or financial aspect of the system is that which is almost invariably dwelt upon, it is by no means the most interesting one. Here is an enormous, an incalculable force practically let loose suddenly upon mankind; exercising all sorts of influences, social, moral, and political; precipitating upon us novel problems which demand immediate solution; banishing the old before the new is half matured to replace it; bringing the nations into close contact before yet the antipathies of race have begun to be eradicated; giving us a history full of changing fortunes and rich in dramatic episodes. Yet, with the curious hardness of a material age, we rarely regard this new power otherwise than as a money-getting and time-saving machine. We know sufficiently well the number of passengers and of tons of freight which the railroad system annually moves; we know how much it cost, we guess at what it will return; but not many of those who deal in its securities, or live by means of it, or legislate for it, or who fondly believe they control it, ever stop to think of it as, with perhaps two exceptions, the most tremendous and far-reaching engine of social change which has ever either blessed or cursed mankind.

It cannot, therefore, be time wasted to look for a while at the new agent or master from the other point of view, — to consider how it has already affected human interests. Some such discipline is absolutely necessary before any one can be at all fitted to approach the very difficult problems arising out of it which are certainly in store for us, both socially and politically, in our immediate future. Perhaps if the existing community would take now and then the trouble to pass in review the changes it has already witnessed it would be less astounded at the revolutions which continually do and continually must flash before it; perhaps also it might with more

grace accept the inevitable, and cease from useless attempts at making a wholly new world conform itself to the rules and theories of a bygone civilization.

Among the transformations effected by steam-locomotion, perhaps the most obvious of all is the rapid enlargement of the area of civilization. Emigration has recently passed into a new phase of development, under which it might almost be said that entire nations have been mobilized. Until as recently as the year 1847, the old Phœnician method of colonization, somewhat improved in details, yet prevailed. As the Greeks sent out colonies to the Ægean isles, to Asia Minor, and to Sicily, — as the Romans conquered the barbarians, and then held them as colonists, — so the Spanish, the Dutch, the French, and the English planted their offshoots in every quarter of the globe called uncivilized. In some regions, as in the East, they held races in subjection, and fostered colonies of the Roman type, while in others they established feeble settlements on the model of the Greeks. As a rule, the growth of these colonies was as slow in the modern as it had been in the ancient times. By no means was it always even rapid enough to be healthy. A few, in the long course of years, struggled through the vicissitudes of infancy and became flourishing communities; many languished, and many died. The law of their progression through twenty centuries had continued essentially the same.

At length, in 1846, vague rumors of regions rich beyond all precedent in golden ores, and only then discovered on the shores of the Pacific, pervaded the whole civilized globe, and, under the influence of steam, a new phase of colonization at once developed itself. To the new gold-fields rushed whole populations, and forthwith steam became their servant, and bound them closely with the older world. Where yesterday had been a wilderness, California and Australia took their places among the communities of the globe. The new era was making itself felt, and, under its fostering impulse, communities sprang into life full grown. Without the assistance of steam, settlements would probably have been established, and

lingered in slow growth, along the shores of the sea and on the banks of navigable rivers; but the steamboat and the locomotive lent their aid, and the very Arabs of civilization became substantial communities. So far as the inducement of gold was concerned, the same process now going on upon both slopes of the Rocky Mountains was witnessed in the colonization of Mexico and Cuba. With Cuba it succeeded, as the ocean connected the colonist with the world; with Mexico it failed, because colonization was too rapid to be healthy, and the scattered emigrants, cut off from and unsupported by the intercourse of their kind, merged into, and both degraded and were degraded by, the semi-civilization of the aborigines. Such was not the case with Nevada. The discovery of some black-looking, heavy fragments of stone in the uninhabited, hideous region of the Great Basin suddenly revealed to the world in 1859 the existence of that famous Comstock lode, which almost at once called a State into existence. Mining-camps, towns, and even cities started up like mushrooms and at once experienced the influence of the new law of civilization. No long, wearisome, and dangerous wagon-road, scarcely marked out across the plains, connected a nomadic population of semi-barbarous, undomesticated men with a distant civilization which was to them as a dream of their childhood; but, almost at once, the ringing grooves of the railroad merged them with the denser populations of the East and West. So the new era of material development, by a process of its own, is peopling and subduing the wilds of America and Australia. This is the present exemplification of a law which dates back only twenty years.

What other possible exemplifications of it await us? California and Australia have revealed their secrets; — how long will those of Mexico and South America and Africa remain concealed? The application of the new process of development to Mexico and South America can only be a question of time; already begun, it must go on. But as yet Africa can but be accounted among the possibilities of the future. Let it once share the fate, as it one day may well do, of California or

of Australia, let it once reveal a hidden wealth, which somewhere surely exists, and those now living may see the solution of its enigma. Now, such a result is but a dream; but it is a dream far less strange than the Australian and Californian facts of the last twenty years.

We are always inclined to look upon the world as finished, upon known forces as having produced their final results; but results are never complete. Perhaps in 1481 the thinkers of that day may have considered that the printing-press had expended its force as a new power; and in 1522 philosophers may have supposed that the ultimate material effects of geographical discovery could be approximately estimated. But, while it is given to ordinary men to see the full fruits of their own action, the seed sown by men of genius, though it may germinate early, arrives at its maturity only with a distant posterity. The discoveries of Guttenberg and Columbus have produced more startling and more clearly defined results upon the destinies of the human race within the last twenty-five years than in any other equal period of time during the four previous centuries. So will it be with the discovery made by Watt, and its applications by Fulton and Stephenson. A remote civilization in central Africa or South America may perhaps hereafter gauge its whole influence in subduing the wilderness and forcing its secrets from the innermost recesses of nature, but the casting up of that balance sheet will not fall to the lot of this century.

Yet the extent of the change wrought by the new force upon the limits of civilization has hardly been greater than that which has been effected in manners and habits of thought. Whatever constantly enters into the daily life soon becomes an unnoticed part of it, and the infinitely varied influences of the railroad system are so much a part of our everyday acts and thoughts that they have become familiar, and have ceased to be marvellous. The changes have been so gradual that we have failed to notice their completeness. Yet most people who observe at all have vaguely felt that there was some element which made the present century different from all others, —

a century of surprises. The young have found things different upon attaining manhood from what they remembered in their youth ; the middle-aged have wondered if change flashed in the eyes of their fathers as it has in their own ; and the old can easily remember a period less removed from the Middle Ages than from the passing year. Our times are not as those of our fathers.

No power has been so great as to be able to defy the influence of the new force at work, and no locality so obscure as to escape it. From the most powerful of European monarchies to the most insignificant of New England villages, the revolution has been all-pervading. Abroad and at home it has equally nationalized people and cosmopolized nations. The chief bonds of nationality are unities of race, of language, of interest, and of thought. The tendency of steam has universally been towards the gravitation of the parts to the centre, — towards the combination and concentration of forces, whether intellectual or physical. Increased communication, increased activity, and increased facilities of trade destroy local interests, local dialects, and local jealousies. The days of small barrier kingdoms and intricate balances of power are wellnigh numbered. Whatever is homogeneous is combining all the world over in obedience to an irresistible law. It is the law of gravitation applied to human affairs. One national centre regulates the whole daily thought, trade, and language of great nations, and regulates it instantly. In this way, France and England are already bound as closely into two compact wholes, as were formerly the parishes of London or the *arrondissements* of Paris. The same law is revolutionizing Italy. In that country the long-scattered elements of homogeneity, — long kept by foreign influence apart, and in a condition of artificial hostility and jealousy, — yielding with hard struggle to the new influence, are at last drawn together, and are combining with each other as by chemical affinity. Cavour had destiny on his side, and Austria struggled against fate. But for steam the fate of Italy would yet be more than doubtful. Local jealousies, foreign influence,

and domestic treason might well destroy all that has been effected. Sicily might be set up against Sardinia, and Tuscany against Rome. But every mile of completed railroad takes for Italian unity a new bond of fate, — banishes a little more of local jealousy, local interest, and local dialect, and, without the aid of a leader, completes the unfinished task of a statesman.

The same phenomena and the same results are witnessed in northern Europe. The nationalities gravitate. The old, artificial, evil barriers set up by dynasties upon certain inhuman theories as to the balance of powers are visibly breaking down. All Germany, to its own great amazement, finds itself irresistibly drawn towards Prussia, and Prussia will very shortly, not less to its own amazement, find itself Germanized. A power stronger than diplomacy or statecraft is steadily and silently at work; but while, in one locality, it compels to union, in another it tears asunder. Germany unites, but Austria, made up of discordant elements which for centuries have been retained under one head by a skilfully contrived and artificially stimulated antagonism and jealousy of forces, rapidly finds her position becoming untenable. The Hun, the Croat, and the Transylvanian will not combine. They have no affinities of race, of language, or of interest, — the ingredients will not mix. To yield the popular reforms insures disintegration: to resist them provokes revolution. The revolutions of the steam-engine have at last rendered forever impracticable the traditional policy of the house of Hapsburg.

The same new elements are rapidly working out its problems for Russia. Not twenty years ago all Europe was perplexed and alarmed by the growth and imagined power of the empire of the Czars. The seeds of destruction seemed, however, to lie hidden in the very successes of power. It might well be deemed impossible that the vast, incongruous, overgrown empire could remain united from the Baltic to the Bosporus. All this is now changed. Within the last few years only, — brought to it in great degree by the disasters of the Crimea, — the ingredients have been cast into the cru-

cible. Railroads are in course of construction all over the country, and, under their influence, the affinities day by day unite. In a few years Constantinople will be nearer to St. Petersburg than Moscow once was, and the whole great nation will be bound together hard and fast by the iron bands.

On this continent, our own country is the child of the locomotive. With us it has neither combined homogeneous elements, nor forced into conflict those that were incongruous, but it has rapidly disseminated one element over a vast wilderness. The steamboat and railroad alone have rendered existing America possible.

Such are some of the results of peace. The same force has left a deep mark on the results of modern warfare, — a mark no less noticeable from its absence than from its presence. The history of two recent wars, not ten years apart, perfectly illustrates the possible differences of result arising from the regard or disregard of this new element of power. These two are the war in the Crimea and our own Rebellion. Russia failed of success in the Crimea, because she could not avail herself of the steam-engine; the Allies succeeded, because they could avail themselves of the steam-ship. Marseilles and Plymouth were infinitely nearer to Sebastopol than were Moscow and St. Petersburg. The new element of force and combination, neglected by Russia in 1854, we availed ourselves of with decisive effect in 1864. That one new element of power — wholly left out of their calculations by European military authorities in exercising the gifts of prophecy on the result of our struggle — was the one element which made possible the results we accomplished. They told us of the vastness of the territory to be subdued, of the impossibility of sustaining our armies, of the power of a people acting on the defensive. They pointed to Napoleon's dismal experience in Russia, and wondered and sneered at those who would not learn from the experience of others, or profit from the disasters of the past. They could not realize, and would take no count of, the improved appliances of the age. The result the world knows. It saw a powerful enemy's very existence de-

pending upon a frail thread of railroad iron, with the effectual destruction of which perished all hope of resistance; it saw Sherman's three hundred miles of rear, and the base and supplies of eighty thousand fighting men in security three days' journey by rail away from the sound of strife; it saw two whole army corps, numbering eighteen thousand men, moved, with all their munitions and a portion of their artillery, thirteen hundred miles round the circumference of a vast theatre of war, from Virginia to Tennessee, in the moment of danger, and this too in the apparently incredibly brief space of only seven days. From Alexander to Napoleon, the possibilities of combination in warfare were in essentials the same. Within thirty years of the death of Napoleon, that was accomplished which to him would have read as the tale of some Arabian Night. The changes of thirty years threw deep into the shade those of thirty centuries.

All those yet referred to are but the interior circles of the influences already perceptible from the disturbing action of this one new force. It does not confine itself to nationalizing each severed race, but it cosmopolizes nations. It is in this respect, perhaps, that the world is brought face to face with the most subtle and disturbing influence of its new era, — an influence of which the early quickenings are but now making themselves felt, and the complete development of which must be the work of another century. As a result of the frequent and easy intercourse among the nations which has existed of late, — the rapid exchange both of thought and of presence, — there has arisen a steady and increasing tendency towards a union of sympathetic forces, overcoming the barriers of language, habit, and race. New questions are looming up, involving the social relations and the division of the fruits of industry, which are common to all countries, and which bid fair in great degree to supersede questions of local interest. The two great permanent parties into which mankind must always be divided are thus brought vividly into the foreground carrying on their struggle over these problems in a way hitherto unknown. The innovators strive to combine the world over. They regard the

peculiar class of questions with which they concern themselves as overriding all considerations of religion or nationality, — the ancient sheet-anchors of society. They hold international congresses and organize international associations, thus seeking gradually to create a government within existing governments. The end they keep ever in view is such a close concentration of forces as shall enable them to act with decisive effect upon any point of immediate conflict. Meanwhile the party of conservatism, divided by traditional lines, seeks continually to effect the impossible by struggling to preserve forms from which the life has gone out. Hence results a period of transition, marked by a state of human affairs almost wholly wanting in the one element which mankind most eagerly covets, that of stability. The party of attack does not as yet know what it really desires, and the party of resistance mainly sustains itself by virtue of the blunders of its opponents. It would be wholly futile to philosophize over the possible results of this wide array of forces. So far as the facilities of intercourse affect them, the issue would seem to be, whether, in the process of time, a unity of end among men may be brought to override the prejudice of race. The most advanced portions of the world are unquestionably still far from any such result; this description of mobilization is hardly yet begun. At the same time passing events in Europe would seem to indicate that the seed may now be sown broadcast, which is destined to grow until it shall shatter the whole fabric of modern society.

Hitherto this tendency to assimilation has expended itself in the reduction of differences. Much in the way of destruction yet remains to be done before the plan of construction can reveal itself. Meanwhile an incessant wearing away of individual characteristics is very perceptible. More notably is this the case as regards the outward aspect of civilized countries. Since 1830 all the world travels. Already the whole Caucasian race looks alike and talks alike, and is rapidly growing to live alike and to think alike. We mix and mingle, until there is no strangeness left. Those of middle life yet remem-

ber Paris and London in the days of the diligence and the stage-coach; and Rome has come directly within the influence of railroads only within the last ten years; but, after all, the mushroom cities of America, in their very brick and mortar, — in the architecture of their buildings and the age of their walls, — are the same in appearance, and just as ancient, as modern London or Paris. We dream of England as old; we dwell upon the descriptions of English humorists, and picture to ourselves the quaint rambling inns and familiar streets of Dickens, — the haunts of Dr. Johnson and of Boswell, — the spots made familiar by Irving and his great progenitor who showed old Sir Roger the sights of the town; we insensibly associate with modern London, in childlike fancy, the familiar scenes of English literature, from Prince Hal and Jack Falstaff at the Boar's Head Inn to Mr. Pickwick snuffing the morning air in Goswell Street. We still go to that city vaguely expecting to find the quaintness we imagine; at any rate, we do not look for what we left behind us in America. Probably some of this quaintness did until recently linger about London. But though 1829 did not work all its changes at once, the old and quaint went out with stage-coaches. To-day we might as well look for traces of the Indians on Boston Common, or of the renowned Wouter Van Twiller on Manhattan Island. Paris and London have yielded to the new influence, and are giving up their distinctive characteristics, to become the stereotyped railroad centres of the future. Rome, under the influence of the Papacy, resisted the revolution a little longer; and there, until recently, the traveller could yet dwell a moment with the past, and enjoy an instant's forgetfulness of the wearying march of progress. But even there the shrill scream of the steam-whistle broke the silence of the Campagna, and a steam-engine had possession of the palace of the Cenci.

At home, too, we notice similar change. The Revolution has swept away the last vestiges of colonial thoughts and persons. Who that has ever formerly lived in a New England country town does not remember its old quiet and dul-

ness, its industry, the slow, steady growth of its prosperity, and the staidness of its inhabitants? There, also, you met a class of men now wholly gone, — dull, solid, elderly men, men of some property and few ideas, — the legitimate descendants of the English broad-acred squires. They were the gentry, — the men who went up to the General Court, and had been members of the Governor's Council; they were men of formal bearing and of formal dress, — men who remembered Governor Hancock, and had a certain trace of his manners. To-day this class is extinct. Railroads have abolished them and their dress and their habits, — they have abolished the very houses they dwelt in. The race of hereditary gentry has gone forever, and the race of hereditary business-men has usurped its place. They represent the railroad, as the earlier type did the stage-coach.

The same phenomena are witnessed in the regions of thought. It is bolder than of yore. It exerts its influence with a speed and force equally accelerated. The newspaper press is the great engine of modern education; and that press, obeying the laws of gravitation, is everywhere centralized, — the rays of light once scattered are concentrated into one all-powerful focus. To-day's metropolitan newspaper, printed by a steam-press, is whirled three hundred miles away by a steam-engine before the day's last evening edition is in the hands of the carrier. The local press is day by day fighting a losing cause with diminished strength, while the metropolitan press drives it out of circulation and filches from it its brain. Ideas are quickly exchanged, and act upon each other. Nations can no longer, except wilfully, persist in national blunders. Literatures can no longer lie hid as did the German until so few years ago. Since 1830 the nations are woven together by the network of iron, and all thought and results of thought are in common. The same problems perplex at once the whole world, and from every quarter light floods in upon their solution. But increased communication has not alone quickened and intensified thought, — it has revolutionized its process. One great feature of the future must be the rapid uprising

of new communities. Of all such communities questioning is a leading characteristic. They have neither faith in, nor reverence for, that which is old. On the contrary, with them age is a strong *prima facie* evidence of badness, and they love novelty for novelty's sake. This mental inclination will ultimately apply the last test to truth, for error has its full chance and is sure of a trial. The burden of proof seems likely to be shifted from the innovator to the conservator.

It is in the domains of trade, however, that the revolution is the most apparent and bewildering, — that the sequences of cause and effect are most innumerable and interminable. Herbert Spencer says that it would require a volume to trace through all its ramifications the contingent effects of the every-day act of lighting a fire. These effects are imperceptible, but the influence of steam locomotion as applied to trade is as apparent as it is infinite. In this respect steam has proved itself to be not only the most obedient of slaves, but likewise the most tyrannical of masters. It pulls down as well as builds up. The very forces of nature do not stand in its way. It overcomes the wind and tide, and abolishes the Mississippi River. It is as whimsical as it is powerful. The individual it carries whithersoever he will, but whole communities it carries whither they would not. It makes the grass grow in the once busy streets of small commercial centres, like Nantucket, Salem, and Charleston. It robs New Orleans of that monopoly of wealth which the Mississippi River once promised to pour into her lap. It threatens to make a solitude of the once busy wharves of Boston, and it fills New Hampshire with deserted farms. For some mysterious reasons which it will never disclose, it carries wealth and importance past one threshold that it may lay them down at another. The old channels of commerce are broken up, and the points which depended upon them are left to philosophize upon the mutability of human affairs in forgotten obscurity. Meanwhile San Francisco and Chicago spring up like a very palace of Aladdin, and the centre of population is transferred, as if by magic, to some point which existed in the school-books of the present generation of men

only as a howling wilderness. Meanwhile prices seek a level; produce is exchanged; labor goes where it is needed. England and Russia exchange bread for cotton, and Iowa and Ireland, labor for corn. These countries are nearer to one another now than in 1829 were the very counties of England. Increased activity demands new centres and channels, and those phenomena result which men call railroad centres, the apparition of which on the face of the earth is confounding and puzzling all thinking men. At the time of the great plague, just before the fire of 1666, De Foe estimated the population of London at one million souls; but Macaulay places it, more accurately, for about the same time, at 500,000. In the succeeding century and a half it increased about threefold, until, in 1831, it numbered 1,600,000. The new era then commenced, and from that time the growth of London was almost to be dated. During the next twenty years its population had risen to 2,500,000; and to-day it contains within its limits hardly less than 4,000,000 of human beings. Between 1666 and 1821 it had a growth of three hundred per cent, and it has experienced nearly similar increase between 1821 and 1871. When Fulton steamed up the Hudson, Paris was a city of rather more than half a million of inhabitants, and it now numbers about 2,000,000. In the days of Louis XIV. it had 490,000, and in 1841, 912,000, — an increase of one hundred per cent in two centuries. In 1866 it had 1,825,000, — an increase of one hundred per cent in twenty-five years.

The results in America have been no less extraordinary. In 1807 New York numbered a population of about 75,000. Chicago existed in 1829 only as an uninviting swamp inhabited by a dozen families, and San Francisco was hardly a name. In 1830 New York contained over 200,000 inhabitants; and to-day they exceed 900,000, without considering those suburbs which enter so largely into the bulk of London and Paris. Between 1829 and 1870 Chicago had increased to 300,000, and San Francisco since 1847 has become a city of 150,000 inhabitants.

Nearly twenty years ago Macaulay called attention to the fearful human material of which this growth was composed. He then referred to the arguments used by Gibbon and Adam Smith to prove that the world would not again be flooded with barbarism; and he remarked that it had not occurred to those philosophers "that civilization itself might engender the barbarians who should destroy it. It had not occurred to them that in the very heart of great capitals, in the neighborhood of splendid palaces and churches and theatres and libraries and museums, vice and ignorance might produce a race of Huns fiercer than those who marched under Attila, and of Vandals more bent on destruction than those who followed Genseric." When Macaulay used these words in Edinburgh in 1852, he could hardly have realized that the growth of those great cities was but just begun; but since that time London has increased fifty per cent, and the "Vandals" of Paris have recently given a point to his well-balanced period which it never had before. For America, and the permanence of republican institutions, this tendency of population to concentrate at great railroad centres, cannot fail to be a subject for anxious consideration. The success of popular government must depend solely upon the virtue, the intelligence, and the public spirit of the people governed. As long as the members of any community can be approached by reason, or by argument, or by considerations of the public good, there is no sound cause to despair of the safety of any republic. It is useless, however, to hope or to struggle for that safety for any length of time after one party has firmly established its power upon the basis of an ignorant, unapproachable proletariat. The tendency of all self-governed great cities is inevitably towards this political control through the agency of irresponsible masses. The history of Athens and of Rome is continually repeating itself, and never has its reproduction displayed features more closely resembling the great originals than now in the leading municipalities of America. In what respect, except in name, does the city of New York enjoy a republican form of government? Yet the difference between New York and the

other great cities of the continent is simply one of degree. The same tendencies, which must inevitably lead to the same results, are manifest everywhere. The dense aggregation of mankind may be said to necessarily result in an upper class which wants to be governed, and in a lower class which has to be governed. The extreme of luxury and the extreme of misery are equally fatal to public virtues; and no one can doubt that the great cities of the future are destined infinitely to surpass, both as regards luxury and misery, anything of the kind which the world has yet seen. This must result from the mere progress of railroad development. It is no less certain that republican America is destined very shortly to be dotted all over with these centres of population. Created by railroads, the railroads lend to them a gravitating influence both moral and political which cannot be ignored. To hope for a pure government by the people at large while ignorance and corruption are the ruling forces in these centres, is as futile as it would be to look for healthy members where the vitals are diseased. This it is which really constitutes that problem of great cities which so confounds the friends of popular government.

Meanwhile the influence of this railroad power upon the politics of America and the political theories at the base of party organizations has been very strongly defined and little considered. Paradoxical as it sounds, it has actually made that which was mistaken, right, and that which was dangerous, safe. The year 1830 was a year of political revolution in America, — the friends of a strong central government went out of power, and a party hostile in theory to all concentration of governmental functions came in. It can now hardly admit of a doubt that both parties to that bitter and memorable struggle were right, and it is equally true that both were wrong. Both, however, were made right or wrong by one element which entered into the practical solution of the questions agitated with decisive consequences, — an element wholly unanticipated by either side, — the element of improved locomotion. It may now with safety be premised that a strong

central government was a political necessity for the United States of a time anterior to 1830; that in this respect Hamilton was right and Jefferson was wrong. It may also, with equal safety, be asserted that a strong central government constitutes a continually increasing political danger for the United States of the period subsequent to 1830; that the school of Hamilton is wrong, and the school of Jefferson is right. An equally thoughtful and observant man would thus have been a Hamiltonian up to 1830, and a Jeffersonian subsequently to that date. During the first period he would have seen a country of vast dimensions and sparsely settled, without means of communication or diversified industries, full of local jealousies and destitute of any recognized centre of thought or business, — a country, in short, in constant danger of going to pieces from lack of cohesion, — a country in which the centrifugal force continually tended to overpower the centripetal. Then the railroad system sprang into being, and all this rapidly changed, — science suddenly supplied that cohesion which it had been the great study of the statesman to provide. The point from which danger was to be anticipated thus gradually passed to the other side of the circle, — everything centralized of itself, — all things gravitated: the unaided centripetal force was clearly overcoming the centrifugal. Thus the error of yesterday had become the truth of to-day, and the only men who were hopelessly wrong were the thoroughly consistent. The world at large rarely allows for these changes of conditions; a statesman or a political party must stand or fall with the permanence of that policy with which they have identified themselves, and posterity rarely stops to consider how circumstances have altered cases. Yet it is none the less true that the inventions of Robert Fulton and George Stephenson settled, in the minds of all thinking men, those great questions of internal policy for the United States government which were so fiercely contested in the first cabinet of Washington; and the way in which they settled them was by altering every condition of the problem. The destinies of nations are, perhaps, very much more frequently

decided in the workshops of mechanics than in the councils of princes.

The influence of this same power has, however, made itself felt by the people of the United States in their political capacity more recently and in another way, though the sequel of this last experience is yet to be developed. The war of the rebellion left the United States heavily burdened with debt, upon which a high rate of interest had to be paid, while its people were at once infected with a mania for speculation and debauched by an irredeemable paper currency. A system of taxation was in use calculated to excite in equal degrees the wonder and contempt of all future students of fiscal problems. Under these circumstances the shrewdest men of business were always predicting an immediate and wide-spread commercial catastrophe, and the more cunning politicians hastened to conciliate the spirit of repudiation, which they asserted was sure to rise up. History furnished no precedent which would lead any political economist to suppose that a currency once greatly debased would ever appreciate through a regular and healthy process; and the statesman could not but see with alarm evidences of indebtedness passing out of the country into foreign hands by the hundreds of millions. It is not too much to say that the financial history of the six years between 1865 and 1871 falsified every prediction ever made as regards it. No wide-spread commercial crisis, no general collapse of private credit took place in America, nor did that one which swept over England cross the Atlantic; the public debt was steadily decreased, and the interest upon it was cheerfully paid; the spirit of repudiation ruined in its early death the hopes of numerous political charlatans; the currency rapidly appreciated to its gold value, while the mass of indebtedness against the country held in foreign hands constantly increased, and showed no signs of a return for redemption.

The simple truth was that, through its energetic railroad development, the country then was producing real wealth as no country ever produced it before. Behind all the artificial inflation, which, if the experience of the past was worth any-

thing, so clearly foreshadowed a catastrophe, there was also going on a production which exceeded all experience. This new element vitiated the best reasoned conclusions. The railroad system, acting upon undeveloped and inexhaustible natural resources, dragged the country through its difficulties in spite of itself, — it actually seemed as though fraud, ignorance, and speculation combined were unable to precipitate disaster. While all of these agents were noisily at work, every mile of railroad constructed was quietly adding many times its cost to the aggregate wealth of the country, — the tonnage carried over the new roads built each year was many hundreds of millions in value, while that of the old roads always increased, so that the estimated average of annual transportation, which was but $85 for each inhabitant of the country in 1860, had, in 1870, risen to $300.

Such an increase in actual production could alone account for the general setting aside of all the lessons of the past. Not the least instructive part of this experience was, perhaps, the complacency with which a certain class of philosophers mistook the operation of a great, quiet, natural force for the results of their own meddling. One school attributed the freedom from commercial disaster to the juggle of paper money. Another saw in the great prosperity of the day nothing but a vindication of the absurdities of protection. While sciolists talked, however, the locomotive was at work, and all the obstructions which they placed in its way could at most only check but never overcome the impetus it had given to material progress.

The same direct influences could unquestionably be traced into morals, which have been observed in other departments of life. The laws of combination and gravitation apply to ethics no less than trade. Here, however, it is far more difficult than elsewhere to strike the balance of profit and loss. Whether the world, as a whole, is better or worse than it was forty years ago is a point upon which the statistician can as yet throw little light, and concerning which the divergence of opinion between the old and the young is apt to

be excessive. One thing is very clear, the golden age of purity and simplicity has always lain behind us ever since those early times when it was first created in the imagination of the earliest poets. We never realize how bad the old times were, until we come to grope amid the happily forgotten records of their filthy vices.

Such is a passing sketch of some of the disturbing influences of the new power on the general aspect of the century, — influences so all-pervading in their results as to be rather revolutionizing than disturbing. Whatever affects the whole affects every part. It would therefore be mere waste of time to follow out with curious assiduity the myriad remoter ramifications, until, among larger incidents of change, we should find the possibilities of emigration modifying for a time the terrible truth of the Malthusian theory of population, and the exodus of the nations going quietly on before our eyes upon a scale which reduces to insignificance the largest of those human tides the flow of which is traced through the pages of Gibbon; or we might see the Highlander expelled from the mountain fastnesses of his clan, because the railroad has made them so accessible as a pleasure-ground to the English nobleman, and a writer like John Stuart Mill forced to declare that so wonderful are the changes, both moral and economical, taking place in our age, that, without perpetually rewriting a work like his "Elements of Political Economy," it is impossible to keep up with them. Such would be the instances among nations and authors, and, descending, we should see the increased demand for a cheap press influencing the price of rags in a country village, and the increased use of lubricating oil compensating to the fisheries for the innovation of gas. All of these, too, are the revolutions worked in a single half-century by a force which is as yet bound up in its swaddling-clothes. Its iron arms have been stretched out in every direction; nothing has escaped their reach, and the most firmly established institutions of man have proved under their touch as plastic as clay. Everything is changing, and will change with increasing rapidity. No human power can stop

it. It is useless to cast back regretful glances at the old quiet days of other years and another order of things, — at the middle ages antecedent to 1807. The progressive may exult, and the conservative may repine, but the result will be all the same. We must follow out the era on which we have entered to its logical and ultimate conclusions, for it is useless for men to stand in the way of steam-engines. Change is usually ugly, and the whole world, both physical and moral, is now in a period of transition. But the serpent does not cast his skin till the new one is formed beneath the old; and because the old world is now sloughing its skin, we cannot conclude that the world of the future is to exist without one.

> "To-day I saw the dragon-fly
> Come from the wells where he did lie.
>
> "An inner impulse rent the veil
> Of his old husk; from head to tail
> Came out clear plates of sapphire-mail.
>
> "He dried his wings; like gauze they grew;
> Through crofts and pastures wet with dew,
> A living flash of light he flew."

It would be simply presumptuous to try to cast the horoscope of this revolution after thus surveying the changes already wrought. If we wished to draw a few feeble inferences to reassure ourselves in regard to the future, we could best do so b falling back on the analogies of the past. The changes of the future will undoubtedly be more rapid, more complete and more bewildering than those of the past, in the same ratio that the combined forces now at work are engines more powerful for change than the comparatively simple ones of the earlier days. Still, the past cannot but throw some light on the future. To the dwellers in it, the world doubtless seemed sufficiently lovely before the middle of the fifteenth century; but then the sloughing-time came on, and the old skin was slowly shed, and, in the ripeness of time, the new was found better. The old passed away amid the fierce contortions of tortured communities, — through wars and revolutions and inquisitions and anarchy. The period of change

was ugly, and mankind often had cause for discouragement; but the worst times were found bearable, and the result has justified the price. Our era has just begun to work its own revolution. That its results will all be pleasant, we may not hope; that its course will be marked by fierce agonies, we have been fully taught by the events of the last few years; but that it will in the end serve to elevate and make more happy the whole race of man upon earth, we have some cause to trust. Yet in surveying the history of the last great era just finished, — the distinctive era of the printing-press, with all its changes from 1444 to 1807, — the imagination is bewildered and lost in the vain effort to realize those more striking changes which are to make remarkable the new era upon which we have just entered, — the distinctive era of steam locomotion.

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## CHAPTER II.

### THE TRANSPORTATION TAX.

IF by Free Trade is meant the unrestricted exchange of the products of their industry among the peoples of the earth, George Stephenson more than any other man deserves to be called the great practical Free Trader. His invention went very far towards abolishing the one sure basis of the whole protective system, — the one tax for which not Adam Smith nor Cobden, neither abstract reason nor corn-law leagues, could suggest any measure of repeal. Stephenson took off from the world at large four fifths of the transportation tax. During the last quarter of a century it may be said that the whole efforts of the protectionist school have been concentrated upon the attempt to replace, in the form of an arbitrary impost, a portion of that burden which the improved facilities of transportation had removed from human industry. Meanwhile apt illustrations are not far to seek of the part which the railroad system has borne in the great work of bringing the price of

things in their place of consumption as near as possible to their price in that of production. Perhaps as striking an example of this as could be found is presented in the case of the leading material interest of the American people, — the productions of agriculture, and more especially corn and wheat. Formerly, upon the old highways, it cost as much to carry a bushel of corn 125 miles, or a bushel of wheat 250 miles, as either of these articles was worth. The railroad has increased this distance of possible carriage twentyfold. In other words, it now costs less to carry a given quantity of corn or wheat from Boston to San Francisco by rail, than forty years ago it would have cost to carry the same quantity by the highway from Boston to Albany. Where, therefore, formerly a given centre could, as regards these cereals, hold tributary to it, through land carriage and before all value was exhausted, only some 50,000 square miles, or a region of about the area of New York, it can now hold, at the same cost, over 8,000,000 square miles, or more than twice the area of the whole United States.

Taking this given point as a centre, therefore, it follows that a slight fractional increase or decrease in the transportation tax must add to it or strike from it thousands of square miles of tributary area. For instance, Chicago is the great produce market of the country, and New York is its commercial centre. The distance from one point to the other is a thousand miles. In these days of fierce competition, five cents a bushel is no small fluctuation — loss or gain — for the dealers in corn and wheat. As a part of the transportation tax between Chicago and New York this important variation of five cents a bushel represents the merest trifle more than one mill and one half per ton per mile. To the producers of a very large portion of the interior of the continent, therefore, a matter of two mills a ton per mile in freights must necessarily involve the whole difference between a profit and a loss on their annual industry.

Exception may perhaps be taken to the use of the odious word "tax," in connection with the charge imposed for carriage

by rail. It may be said that this is a tax in no other sense than a charge for any other necessary service rendered is a tax. Usage and long-established authority have, indeed, fixed upon this word a meaning which is too exclusively political, — as though some form of government could alone, and solely for its own purposes, impose a pecuniary burden under the name upon the wealth of a community. Such a definition is open to serious objections. It not only creates a mischievous confusion of ideas, but it actually deceives the community as to the extent and unnecessary nature of many of the burdens under which it labors. The burden of taxation, as it is called, is crudely measured by the proportion which the public revenue bears to the numbers or supposed wealth of any community as expressed in the census. Such a measure is fallacious in the extreme. A tax is not only a contribution taken directly from the resources of any community for governmental or public uses, but, in its general significance, it is also any burden, natural or artificial, which, without altering the intrinsic value, the quality, or the quantity of raw material, adds to its cost before it reaches the consumer.

It is an elementary principle of political economy, that all wealth comes from the soil; neither human industry nor human ingenuity can produce any addition to the material possessions of mankind, except from the earth. Everything produced from the earth, moreover, is valuable only in so far as some one wants it and is willing to exchange labor or its products for it. Speaking somewhat loosely, all mankind may, then, be divided into the two great classes of consumers and producers, — to the first of which every human being, and to the last of which the vast majority of mankind, belongs. Between the producer of the raw material and the consumer there comes an intermediate class, the possessors of skilled labor, those who by their industry lend an additional intrinsic value to the raw material. Such are all manufacturers. The sum total, therefore, of the wealth of any community and of the whole world consists of all that which it has extorted from the earth, enriched by any factitious value which may have been added to

it. These two elements of cost — production and manufacture — are necessary preliminaries to a fitness for consumption : everything beyond these which adds to the price of a commodity before it reaches the consumer is a tax levied upon consumption or production ; just as much a tax, if the increase is charged for transportation and collected by an importer over his counter, as if it is charged for revenue and received by a collector at the custom-house. If tea, for instance, is raised and cured in China, and thence transported thousands of miles to London, and the consumer in London pays three times the price at which it was sold by him who cured it in China, that additional sum, however fairly earned by the services rendered, is nothing more nor less than a tax of two hundred per cent on the consumption of tea in London, which again reacts and affects the profit on its production in China. It is a necessary tax, perhaps, in view of existing means of transportation, but none the less is it a tax. The process of removal from one point to another — from the point of production to that of consumption — has added nothing to the wealth of the world. It has, indeed, distributed, but it has in no way increased or intrinsically qualified human possessions ; for after it, as before, whether in Canton or in London, the world possessed the same number of pounds of tea of a given quality. So of flour, of cotton, and of every other product of the soil. Transportation is simply a distribution of wealth in existence ; and the cost of distribution constitutes a tax on consumption, levied indifferently on the producer, the manufacturer, and the consumer. This tax must necessarily fall upon all parties, though in unequal proportions very difficult to ascertain. Could it be wholly abolished, and breadstuffs be transported without cost to London, the exchangeable value of flour would rise in Chicago and fall in Liverpool. Society would then at once be relieved of a tax in comparison with which all the imposts of governments are trivial. In like manner, anything which adds to the necessary cost of transportation aggravates the tax, and anything which diminishes it removes one more burden from human toil.

These facts and principles must be clearly borne in mind, else the great interest which communities have in all questions of transportation cannot be appreciated. The preliminary discussion may be fairly summed up as follows. All elements of price which add to the amount paid by the consumer of any commodity above the cost of the production and manufacture are in the nature of direct taxes on consumption and of indirect taxes on production, — whether imposed by government, by distance, or the friction of trade, — everywhere and always a tax.

The transportation tax, however, has one peculiarity in common with the tariff tax upon imports; the lower it is fixed, within certain limits, the larger in the aggregate it becomes. Large aggregate receipts of railroad corporations, or large *per capita* payments to their railroads by communities by no means necessarily indicate an oppressive scale of railroad charges, but, not improbably, the contrary. Industry pays a large tax because the tax is levied in such a way that industry is stimulated, and carries its burdens easily. With municipal taxes, except those raised from tariff imposts, the case is wholly different. Every increase there indicates a direct addition to a burden, — the larger its aggregate the heavier is the load imposed by it upon the production of the State; in the case of the transportation tax, on the contrary, the larger the total becomes the greater is the volume of business indicated, and, very probably, the lower the tariff rates.

It is computed that the yearly revenue of the 53,000 miles of railroad now in operation in the United States is in the neighborhood of $450,000,000, and represents an annual average payment of nearly $12 per head from the whole population of the country. The rapid growth of this payment has been extraordinary, and well illustrates the importance of the limitation last referred to. In 1840, when there were less than 3,000 miles of railroad in the country, the annual payment hardly exceeded $8,000,000 or fifty cents each to the inhabitants of the country. Even in 1860 it scarcely equalled $150,000,000 or less than five dollars per head. These sums

measure the growth of the internal commerce of the country. Should a new invention come into use which should prove as great an improvement upon steam locomotion as that is on the system which preceded it, the aggregate transportation tax would not improbably be increased several fold, and amount, perhaps, to fifty dollars a year for each inhabitant, and yet, upon the tonnage now moved, the yearly expenditure would be decreased from $450,000,000 to $45,000,000. The large amount of the levy affords in itself no just ground for complaint.

The next question is, For what purpose is this tax levied, and to whom does it accrue? What portion of this large sum is a necessary tax upon the community; and what portion, if any, is unnecessary? Railroads must not only be built, but they must be operated. The gross income of the system must therefore be devoted to two ends: first, to the operating of the roads; and, secondly, to the remuneration of the capital invested in them. The tables of statistics show, that, under the present system of operating American railroads, which must be presumed to be reasonably economical, seventy per cent of the gross earnings are consumed in operating expenses. This is approximately the absolute cost of working and replacing the machinery which keeps up the movement of commerce. It is the necessary tax, the first cost, as it were, of friction. The remaining thirty per cent of the $450,000,000 of gross revenue — perhaps $150,000,000 per annum — is the amount reserved as a remuneration for the capital and the risk involved in the construction and management of the system. This sum is, therefore, an annual tax by itself, which the people of this country pay to those who own and control our railroads. In view of the inestimable value, both immediate and prospective, of the service rendered, and of the essential part it plays in material and moral progress, it would indeed be strange if this tax were very closely scrutinized, or were not cheerfully, and even eagerly, paid. Yet every tax upon their resources should be calmly and carefully scanned by a people which pretends to guide its own destinies. In spite, however,

of its enormous proportions and onerous nature, in spite of the fact that it adds to the cost of every article of consumption and enters into the expense of every movement of national and individual life, this transportation tax is so indirect in its nature, so plausible and fair in its reason, and is so completely a part of the customary life of the community, that, until within a very few years past, it has excited absolutely far less real attention and less earnest discussion than a tax of a dollar a gallon on whiskey, or two cents a pound on cotton. Indeed, it has not as yet even excited enough attention to cause the several State governments to procure returns and statistics about it. Its very amount must be guessed at from such partial data as the corporations themselves see fit to furnish.

Two thirds of this annual tax of $450,000,000 may then be regarded as made in payment of actual work of transportation, and the remaining one third represents what is, in the opinion of the owners of the roads, a fair compensation, or at any rate the best that can be got, for the use of the capital and the risk involved in the business. In other words, certain private individuals, responsible to no authority and subject to no supervision, but looking solely to their own interests or to those of their immediate constituency, yearly levy upon the internal movement of the American people a tax, as a suitable remuneration for the use of their private capital, equal to about one half of the expenses of the United States government, — army, navy, civil-list, and interest upon the national debt included. Whether this sum is in the aggregate an excessive remuneration or not is immaterial. Probably, as will hereafter be seen, it is not. This consideration only partially meets the real vital point at issue. The question of the manner in which the amount is raised is even more important than the amount itself. For it may well be that a tax, not in itself excessive, may be raised in an annoying and vexatious manner; or so as to oppress one locality, at the expense of another; or it may be exacted in payments which fluctuate wildly at different times, destroying all basis of sound business calculation; or it

may be regulated so as to exact the greatest compensation possible for the least possible service; or, finally, it may be calculated to produce a fixed and reasonable profit, and to discourage all business development in excess of that easily able to pay such profit. All of these are matters not of mere study, — they are not suggestions of that which is improbable, — but they are points of serious public concern. They are all involved in the question of the manner in which the transportation tax is raised, as contradistinguished from its amount.

The obvious danger of committing so extraordinary a power as that described to private individuals, could not well have escaped the attention of legislators even in the earliest days of the system. But when the process of railroad construction began, forty years ago, those who were called upon to inaugurate it little foresaw the proportions which it was soon to assume. They, however, took every precaution against abuse which suggested itself, and the world has since done little more than follow in the path marked out, and elaborate and work over the various measures then devised.

This, however, took place the lifetime of a generation back. The practical working of the various theories on which the system was inaugurated has of late years been anxiously discussed, and the question of how the community can best regulate and keep within bounds the cost of its transportation is assuming a new significance. The time also has now come when the operation of the various laws, whether natural or human, — whether laws of trade or acts of legislature, — which were relied upon to secure a healthy and economical railroad development can be passed in review and a judgment be calmly formed upon them.

Sir Robert Peel and King Leopold of Belgium were probably the two men of those days whose minds exercised the most immediate and lasting influence upon this question. They both approached it, however, in the manner characteristic of their education, habits of thought, and the political and social surroundings in which they were placed. Peel was essentially

a parliamentarian; King Leopold was the model head of a bureaucratic government. The former instinctively turned for protection to the operation of natural laws, such as competition or the laws of supply and demand, supplemented, if need be, by any desired amount of acts of Parliament; the latter took counsel with the economists and administrators, and shaped a policy under which the community was intended to cut itself loose from the capitalist, and to undertake the management of its own channels of communication in its own interests. The systems inaugurated respectively in England and Belgium under the impulse of these two minds have since spread over the whole civilized world. The several nations have modified them in greater or less degree to meet local conditions or habits of thought or action; but, in great essentials, the two groups all the world over clearly exhibit their distinctive characteristics.

The English system, which is that also in use in America, rests wholly upon the fundamental principle of the private ownership of railroads by corporations. By these corporations the roads are to be constructed, and they recoup themselves for the risk and expenditure involved by levying a toll for the transportation of merchandise or passengers. Two agencies were relied upon to prevent the owners of the railroads from abusing the power confided in them; the one was competition, the other was statute regulation. It was argued, and still is argued, that if railroads were left wholly alone, if all parties were free to construct them wherever a demand for them was thought to exist, if these parties were free to make what they could on them, that, in this case, wherever the profits of the capital employed were excessive new capital would flow in and new roads would be constructed until here, as in all other departments of trade, profits and charges would equalize themselves. This was Peel's early argument; it did not last long with him.

It was many years, however, after the railroad system was inaugurated, before any, except the most clear-sighted, could be made to realize that railroads were monopolies, and must be

treated as such, not only in their own interest, but in that of the community. King Leopold, saw it as early as 1834. George Stephenson saw it from the beginning, and condensed the whole question into the pithy apophthegm, that "where combination was possible, competition was impossible." Again in 1846, before a committee of the House of Commons, he gave it as his decided opinion that the power of government supervision should extend to vetoing the construction of competing lines, to protect the public against the heavy rates of traffic which would be required to remunerate the capital involved in their construction. Stephenson fully appreciated what the ultimate burden of free trade in railway construction would amount to. He saw that a line once built must impose a tax on the community, if only to keep itself in existence. He also saw, that, if a competing road was built to divide any given business which could by any possibility be done over a road already constructed, in the end that business must support two roads instead of one. A very slender knowledge of human nature would have enabled him to take the next step, and conclude that any number of competing roads would ultimately unite to exact money from the community, rather than continue a ruinous competition. As combination must always remain possible, no matter how many roads are constructed, it necessarily follows that the more roads the heavier tax, provided always a less number properly managed could have been made to do the work. Relief did not lie in that direction; it could be found there only under circumstances which rendered exclusive combination impossible. Nor is human legislation to be included in the number of such circumstances. Had Stephenson lived a few years longer, he would have seen in England an excellent example of the virtues of railroad competition guaranteed by law, as a safeguard to the community, — an example not without a savor of comfort for America, with the memory of recent legislative experiences fresh in mind. The Great Northern Railway went before Parliament for its charter. The lines threatened with competition combined their influence,

and the bill was thrown out. The next year the application was renewed, and those having the bill in charge engineered it successfully through Parliament by offering to accede to a charter limitation of first-class fares to a point thirty per cent below those charged by the existing companies. The bill was passed and the line constructed, so that a combination, except at low fares, seemed prohibited by act of Parliament. Before the new road was opened, however, before a passenger had passed over it, its directors, pointing out to the other companies how much they would suffer from such ruinous competition, induced them to combine the Parliamentary strength of all concerned, and they actually got through Parliament an amendatory bill, raising the fares of the new road to the level of the old. The law of self-preservation had simply been repealed by act of Parliament.

How much this fallacy of cheap transportation through railroad competition has cost Great Britain cannot well be estimated. During the mania of 1845 – 46, it was estimated by Mr. Laing, of the Board of Trade, and the estimate was confirmed by Robert Stephenson, that out of three hundred millions sterling, at that time expended, seventy millions had been completely thrown away in constructing unnecessary duplicate lines with a view to competition.

The result of this dependence upon a correct general principle, misapplied, has, in America, been both singular and interesting; and, indeed, it is a question whether competition has done more harm or good to the business community which has relied upon it as a protection in this case against monopoly. No system can work its way out to logical results which is perpetually subject to fluctuations; and competition has ever acted on the railway system as a violent disturbing element. At one time it has forced down the charges on transportation to an unnaturally low rate, only to elevate them at another time by artificial combinations to a rate as unnecessarily excessive. During the year 1869 freights between New York and Chicago fluctuated under this influence, between $5 and $37.60 per ton; and between the same point and St.

Louis, between $7 and $46; while, the Erie Railway carried goods to Chicago at as low a rate as $2 per ton, and from this bounded back to $37. In the last case, part of the transportation was by water; but rates on the same class of freights carried through by rail have ranged all the way from four mills to four cents per ton per mile, and fluctuated violently from the one point to the other. Such has been the result of competition as regards through business, while upon local business its effect has been even more pernicious. "Usually, competing lines, while they seek the same large centres of commerce, reach them through different districts. This confines their competition to the trade of such centres, while the traffic of the country peculiar to each line is not only uncompeted for, but subjected to an extra and often oppressive tax, whereby to restore the revenue depletions each road suffers in its violent struggles with the others for jointly accessible business. The ability to unjustly burden uncompetitive or local trade supplies transporters with strength to wage prolonged contests for other tonnage at less than cost of transport; and this wretched warfare, indirectly ruinous to the local business it overtaxes, is of little real benefit to the property battled for; as, sooner or later, truce is declared, and, if the truce becomes a permanent peace, competition ceases; while if but a temporary measure, it is presently broken, but only to be renewed; then renewed, but only to be broken; while the tax on trade fluctuates with the shattering or maintenance of covenants, until commerce is harassed and dazed and partially prostrated by its wild, illogical, and ruinous changes." *

For these reasons competition has long been regarded among the best authorities on railroads as a dangerous evil. The most sagacious look upon it as a terrible weapon in the hands of the visionary, the reckless, or the ignorant; an almost insuperable obstacle in the way of the judicious, the conservative, and the progressive. It disturbs every calculation,

* "Transportation as a Science." A paper read by Jos. D. Potts, President of the Empire Transportation Co., before the American Social Science Association at a meeting in New York, October 28, 1869.

vititates every result, puts a stop to all experiment, destroys all system. All persons concerned in the management of railways are therefore anxious to get rid of it, — the more respectable, that the railway system may have a chance to work out its results under a settled policy; the unscrupulous and less reputable, that a better occasion for levying plunder may be afforded. Under these circumstances it is not impossible that all may unite in the adoption of the principle now lying at the basis of what are known as the "colored lines," — that of a combination and a clearing-house for the adjustment of difficulties, — as a solution of the question.

Such a combination would, of course, at once put a stop to competition in so far as the land carriage of freight is concerned. And for this reason in many of the States legislation has been directed against the consolidation of competing lines. In 1869 an act forbidding it was passed in New York, and more recently a provision to the same end has been incorporated into the Constitutions of Illinois and of Michigan. It is wholly unnecessary to say that all such measures of State legislation are utterly futile, almost childish. These giants have sometime since outgrown State swaddling-clothes. Even had they not, the character of such legislation is most open to criticism. Certainty and responsibility in management are two of the most important requisites of a good railroad system. This is peculiarly the case in America, where almost our only machinery for the correction of abuses lies in the degree of concentration with which public opinion can be brought to bear in a given direction. If our people distinctly feel an evil and can be made to see that some one is responsible for it, there is no interest nor combination of interests which can long resist the pressure. So far as railroads are concerned, competition puts both certainty and responsibility out of the question; it renders the first impossible, and, by dividing, destroys the last. Most conclusive illustrations of all these propositions, as well as of the utter insufficiency of State legislation to deal with the subject, may be found in the experience of the year 1870.

During that year competition was bitter in the extreme; the rates made East and West were simply ruinous. On certain descriptions of freight they literally were reduced to nothing, and cattle were carried over the Erie road at a cent a head, as against one dollar a car, the rate charged on the Central. On other articles the reduction was not so great, but, both on passengers and goods, rates were purely nominal, and hardly averaged a third of the usual amounts. Of course this could not last. Early in September, 1870, representatives of the competing lines met in New York, and proceeded to put a stop to competition in the one way possible among monopolists, — by combination. The parties in interest were the Central, the Erie, and the Pennsylvania Railroads. The competition was mainly from Illinois to New York. In both Illinois and New York laws forbidding the consolidation of competing lines were in force, and all the roads were carrying on operations in one or both of those States. At the meeting in question it was decided to "pool" the earnings of the colored lines to all competing points; in other words, all receipts from that business which was supposed to receive a peculiar benefit from competition, were to be paid into a common fund, competition was immediately to cease, fixed rates were to be charged, and thus, at last, all the great trunk lines were to be practically consolidated, in so far as the business community was concerned. This arrangement was agreed to, but broke down for the moment because of quarrels among certain of the individual contracting potentates. The irreconcilables were Messrs. Gould and Vanderbilt, two New York men, who represented two New York roads; and yet the New York statute-book contained a recently enacted law intended to prevent and render impracticable any combination like the one agreed upon. Not being able to effect the desired arrangement there, certain of the same parties went to Chicago, in a State where a similar provision to that in force in New York had been made a part of the Constitution, and there they actually did enter into an agreement, under which all the roads between Chicago and Omaha "pooled" their receipts

between those points, and this contract went into effect. Yet no law, no constitutional restriction, was violated. No law, in fact, could be framed which would meet the case, and the solemn efforts to accomplish it were simply illustrative of the extreme ignorance prevailing among fairly intelligent men as to the practical limits of legislation.

The failure of the New York negotiators was, however, only temporary; and, moreover, it is by no means clear that its failure was not a disaster to the community. In this combination would at least have been found some degree of certainty and of responsibility. Rates would no longer have varied with every season and to every city; points destitute of competition would not have been plundered, as they now habitually are, that competing points might be supplied for nothing. During the summer of 1870, accordingly, many towns in New England were charged upon Western freights heavily in advance of the sums charged for carrying the same freights on the same roads a hundred or two miles farther on. All because, through competition, the farther point was served at a loss to the carrier, and, therefore, the nearer had to pay the road profits for both, besides replacing the loss. The agents of the roads do not seek to deny this; they acknowledge and defend it. They say, and say truly: "We must live. If our through business is done at a loss (and they show that it was done for nothing), then our local business must pay for all." This was the case in New England. The cities of central New York fared no better. During a war of rates, almost any manufactured article will be carried from the seaboard to the West for perhaps one half of the amount charged for carrying the article there from a semi-interior point. So also as regards Eastern freights. Syracuse, Rochester, and the like class of cities can neither compete on equal terms with Boston in the markets of the West, nor with Chicago in those of the East. The discrimination against them is said to amount in certain cases to ten per cent of the whole value of the article transported. Neither, under the competing system, is there any remedy for this evil, and a consciousness of this fact, of

the risk to which they are continually exposed, has caused the breaking up of many manufacturing establishments at interior points.

Again, the element of gambling is not considered as an advantageous one in the transaction of business. To eliminate it, to equalize, to insure stability and an even operation of natural laws in trade, is one attribute of an advancing civilization and a chief result of science. Does not a sudden change in a tariff, — a change sprung on the community in an hour, ranging all the way from one hundred to fifteen thousand per cent on all classes of freights, — infuse an element of chance into current transactions? Just this fluctuation took place in September, 1870. How, also, could the business community deal with certainty, or make orders or contracts during that year, when it at one time cost far more to send goods from Boston to Chicago than from New York, and shortly after New York firms had to ship their goods to Boston as the cheapest way of getting them to the West. Thus competition by rail, unlike that by sea, knew no law of supply and demand; there was always a given supply of machinery, wholly irrespective of the demands of trade. Here, then, was no certainty, no stability; a great evil existed; yet who was to be held responsible for it? Upon what point was public opinion to be concentrated? It could not be on the system, for nothing of the sort in an organized form exists; neither could it be on individuals, for they clearly were unable to control events, otherwise there would have been no recourse to "pooling." The responsibility, in fact, was and is absolutely divided away; it does not exist.

States and legislatures will doubtless for some little while longer cling to the idea of competition as regulating tariffs by rail, but it must break down in the end. The value of competition as affecting the railroad system is very great, but it lies in the superior quality of the service it exacts, — the promptness, comfort, civility, and general regard to the wishes of the public. These things no statute can regulate, but competition does; as regards rates on the other hand the

result of thirty years' reliance upon competition may be briefly summed up by saying that nineteen places out of every twenty on our railroads are wholly at the mercy of close monopolies, while each twentieth point enjoys such advantages of the law of supply and demand as may be evolved out of fierce competition, alternating with close combination.

The school of Sir Robert Peel had, however, by no means exclusively relied upon the operation of natural laws to regulate the new system. They would not have been English statesmen had they not had recourse to acts of Parliament to make good any deficiencies in the law of supply and demand; and following, as is the custom in such cases, the precedents already upon the statute-book, they undertook, in the complete breakdown of competition, to apply the remedy against extortion which most naturally suggested itself, that of affixing a limit to profits.

This was accordingly done, and, following the example thus set, in the earliest charters granted in this country are found clauses reserving a power of abating charges for transportation whenever the dividends of the companies shall exceed a certain percentage on the capital. In England, Parliament further attempted to limit the profits of these enterprises by including in the charters long and carefully prepared lists of charges which the companies could not exceed. Such an attempt, made at that time, could of course only be very crude and unsatisfactory. The system, however, expanded through long years into a mass of legislation, half public, half private, based on no principle and no knowledge, and finally culminating, after the manner of the English, in a multiplicity of conflicting acts, and a confusion worse confounded. For instance, by the charter of the Lancaster & Carlisle Railway, passed in 1844, and resembling, at great length, the old toll-boards of the turnpikes, it was minutely set forth that a "horse, mule, or ass" should not be charged at more than three pence per mile, nor a calf or pig, "or other small animal," at more than a penny; and so on through an interminable list, beginning with "dung, compost, and all sorts of manure," and ending

with "passengers and animals." The charter of this road, by the way, consisted of three hundred and eighty-one distinct clauses; and the commission of 1867 reports, that, in addition to the acts of universal application, "the powers of the railway companies and the consequent rights of the public are now scattered through three thousand one hundred acts of Parliament," and are exceedingly difficult of ascertainment.

It further resulted that the tariffs of charges, being based upon the old turnpike and canal experiences, were extremely exorbitant, and the profits of the early lines were unduly large. In other words, the tax levied on the community by the proprietors of the lines in their own favor was evidently oppressive. The attention of Parliament was called to the subject, and in 1844, at the instance of Mr. Gladstone, a law was enacted which contained a clause of general operation, practically, in the view of railway directors, limiting their dividends to ten per cent per annum upon the stock of their roads. This particular feature of an otherwise well-considered act led to results in no way anticipated. Not only did it go far towards bringing on the railroad mania of 1845, which was comparatively a small matter, but it introduced into England the practice of what has since been known as stock-watering, — one of the most ingenious and oppressive forms of burdening the growth and industry of a people and of mortgaging future development which has ever been devised. Immediately upon the enactment of this law the railway managers resorted to the usual weapons of those who wish to tax an unwilling community. The more direct and lighter tax having raised a popular outcry, they acquiesced in what they regarded as its repeal, and at once proceeded to levy several times the sum previously levied, through a vastly more oppressive form of indirect taxation. As they considered that after the enactment of 1844 they could no longer, on their existing stock, safely divide all the money they could earn, the railroad financiers, on every possible pretext, create additional shares, until the gross amount of the stock should be sufficient to absorb, in the dividends allowed by the act, the utmost pos-

sible net earnings of their roads. The Gladstone act, in so far as it failed to place checks upon the creation of new stock, was defective. Excessive charges and large profits had been found to be like excessive direct taxation, — a present burden, which wrought its own cure, and that speedily; but an increase of stock was nothing more nor less than a creation of new national debt. It represented so much paper capital to pay dividends and interest upon which a tax in the shape of transportation charges was to be levied forever. In other words, the increasing business of the community was mortgaged in perpetuity to pay dividends on capital stock of railways upon which not a penny had ever been paid in.

It is not worth while, however, to go into the details of the history of stock-watering in England. There it has never been reduced to a science, although Sir Morton Peto carried it to a very creditable degree of perfection. In America only is the process found in its highest stage of development. Here it may be studied as an art now in its mature perfection, and as such merits consideration by itself.

Neither would it be difficult in American railway history to select examples of another no less unsatisfactory result of this usury law. Roads could be named which have found themselves inconveniently prosperous; so far from having any incentive to increased energy they already, on the business they conveniently did, earned more than it was quite safe for them to confess to. Their profits seemed to invite legislative interference. As a result, development stopped. Every proposal of new enterprise was quietly but honestly met with the argument that it was better to "leave well enough alone." And for this result the corporations should not be held responsible. They had fulfilled their contract, only, by the terms of that contract, the community, at a certain point in their development, not only deprived them of every incentive to growth, but made growth absolutely dangerous to them. Neither men nor corporations will labor, of their own free will, that others may enjoy all the fruits of their labor; and, while the *sic vos non vobis* principle is rigorously applied to railroad

enterprises, who can blame them if they practically reply to all remonstrances and appeals with an indolent *cui bono?* Corporations, like men, will labor unceasingly, and incessantly develop under the impetus either of necessity or gain; but to suppose, when absence of all competition deprives them of the first impulse, and force of law destroys the second, that an abstract love of the general prosperity will induce corporations, any more than men, to do double or fourfold the labor necessarily required to earn a given profit, requires an absence of common sense not infrequently characteristic of the statute-book.

In spite of the ill success which attended all the earlier efforts in that direction, the idea of regulating railroad charges by act of legislature has continued to be a very favorite one in the Anglo-Saxon mind. A deep-seated faith in "the omnipotence of Parliament" is inherent in the English speaking race. No act has, however, yet been framed which meets the case proposed, and it is not easy to see how one could be framed. The difficulty is very apparent. The railroad system of every large community is made up of many different members. These members exist and perform their duties to the community under all sorts of varying conditions. One road is built for passenger travel and another for freight, or even for the transportation of a particular kind of freight, such as iron or coal. There are roads to accommodate local travel and others to accommodate through travel. Construction, and consequently the cost of operation, vary just as much as the configuration of the soil. We thus have a complicated system, between the numerous members of which no connection necessarily exists. The legislature is called upon to frame a law, or a series of laws, which shall regulate the tariff of charges throughout this system.

There are but two kinds of statute which any legislative body can pass; — there are statutes of general operation and those of special operation. A law establishing a scale of fares and freights of universal operation, which would affect one road very slightly, would inevitably ruin another; and a law which would meet the requirements of one half of the com-

munity would almost inevitably ignore those of the other. A simple general law being thus out of the question, the only other resource has hitherto been to acts of special legislation. These of course can be put in operation to any extent, as has already been done in England, and probably with precisely similar results. No large and constantly shifting legislative body can, in the nature of things, be qualified to specifically regulate the tariffs of numerous railroads.

Instinctively appreciating the great difficulties inherent in this matter, and yet feeling a strong desire to do something in the premises, many legislatures in America have taken refuge in a sort of rude rule of thumb. They have sought to fix upon all, or certain of the roads subject to their jurisdiction, a hard indiscriminate tariff on travel or freight of so much per mile. Such a solution of the difficulty may be popular, but it is not intelligent. It ignores all special requirements; all considerations of speed, comfort, distance, quantity or frequency of movement. The operation of a simple clause inserted in its charter, limiting the rates for travel upon the New York Central Railroad, is always pointed out as conclusive evidence of the wisdom of this class of legislation. The Central is one railroad out of many in the State, however, and two obvious criticisms may be made upon the operation of the law even in this case. It wholly fails to provide for the universally recognized principle that the burden of taxation should be adjusted so as least to be felt. He who travels daily is no more considered than he who travels once a year. No provision whatever is made for that discount in price which should always be allowed to the heavy purchaser. The most serious argument that can however be adduced against this precedent is that it discourages and defeats more searching but more complicated efforts at reform. Confining itself to fares, it does not even pretend to touch the intricate subject of freights. In 1851 the freight business and the passenger business were of nearly equal value to the railroad system, returning for that year about $ 20,000,000 each; but during the year 1868 the ratio of freight earnings to passenger earnings was as

$280,000,000 to $120,000,000, or as nearly two and a half to one. The law in question, therefore, ignores that which bears the great burden of the transportation tax. And yet this is the best result of thirty years of consecutive effort towards controlling the method of levying this tax by means of legislative action; — a short, simple rule, ignoring every principle of railroad economy and two thirds of its business, but limiting the charge for travel over a specified road to two cents per mile.

Enough has perhaps been said of the practical working of competition, supplemented by statute regulation, as a means of controlling the mode of raising the transportation tax. It is unnecessary to recapitulate. It is sufficient, in leaving this branch of the subject, to say that, waiving all question of reasonableness of amount, the levying of the $ 450,000,000 a year which constitutes this tax would seem to be marked by many of those characteristics which are considered most objectionable in a government tax. The amount fluctuates wildly and is very unequally imposed; the laws which seek to limit its amount lead to fraud, evasion, and abuse, besides occasionally even to the wilful sacrifice of those interests which they were intended to protect.

It only remains in this connection to briefly describe the results arrived at by the other method of controlling, in behalf of the community, this subject of the transportation tax, — the method of ownership by the state as inaugurated by King Leopold and Stephenson. This also has practically developed into results which its originators could hardly have foreseen. The magnitude of the task involved in supplying with railroads a country even so densely populated and of so limited extent as Belgium was evidently more than the government had anticipated. Accordingly at a very early period it was forced to devolve a large portion of the work upon private enterprise. The result was a mixed system of ownership. The government lines, managed by a bureau at the head of which was a cabinet minister, ran side by side with private lines owned and operated by companies as in England and

America. These were gradually consolidated until, in 1864, of the 1247 miles of railroad in the country some 460 were either absolutely owned or controlled under lease by the government, and the remaining 780 miles, or little short of two thirds of the whole, were in the hands of two private companies. The result of this division of ownership was something wholly unanticipated. It led to a new form of railroad competition, which gave the government without recourse to legislation a complete practical control over the railroad system as a whole. The essential principle of this control was found, not as in England and America in a multiplication of roads built to compete but more frequently combining in private hands, but in a regular and healthy competition through the mixed ownership of roads already existing. Or, stated in another way, the power of combination was destroyed by the introduction into the system of an element which would not combine. In 1866 the practical effect of this novel form of competition was stated by the Belgian Minister at the head of the bureau in these words, "the state railways thus find themselves placed in constant comparison with the railways worked by private companies; on the one hand stimulating them to general improvements, and on the other hand acting as a sort of check against any attempt to realize extravagant profits at the cost of the public."

A sufficient illustration both of the method of practical procedure and of the results arrived at under this system is furnished by the record of the doings of the ten years between 1856–65.

In 1856, in spite of a considerable increase in the miles of railroads worked, the freight movement of the Belgian roads was found to have seriously decreased. Instead of making good the deficiency in receipts by increased rates on existing business, after the manner of private companies, the administration met the emergency by accepting all traffic that offered at greatly reduced special rates. This policy succeeded so well that in 1861 the principle was adopted as regards minerals and raw materials of a regular low scale of charges, with a

reduction according to distance. This resulted in the following year in an increase of 72 per cent in the tonnage of this class of goods. In 1862 the principle was extended to goods of the next class with similar results. In 1864, freights were reclassified and the new principle applied to all except the first class, or small parcels, which in this country are known as express matter. The result was summed up by the Minister of Public Works as follows: "In eight years, between 1856–64, the charges on goods have been lowered, on an average, by 28 per cent; the public have sent 2,706,000 tons more goods, while they have actually saved more than $4,000,000 on the cost of carriage, and the public treasury has earned an increased net profit of $1,150,000." A further reduction, made subsequently to this statement, in 1864, exceeded even these results, and under it the tonnage rose from 4,479,000 tons in 1863, to 6,533,000 in 1864.

In 1865, the government, encouraged by these results, turned its attention to fares, now applying to them principles before applied to freights. A general scale was adopted, in which the charge per mile was diminished in proportion to the length of the journey over 22 miles. For distances less than 22 miles the old rates were retained, varying between 1.2 and 2.5 cents per mile, according to the class of carriage. Above the 22 miles the rates rapidly decreased until the fares for distances over 155 miles were as low as one cent per mile for first class, and seven mills per mile for second class tickets. Under this system the fare from Boston to Albany, for instance, would be respectively $2, $1.40, and $1, according as it was paid for a first, second, or third class ticket, instead of $6, as at present. The effect of this change was a singular and very striking illustration of the immediate influence of any reduction of rates on the volume of travel. The traffic within distances of 22 miles, on which no reduction was made, scarcely increased at all. Between 22 and 46 miles, on which distances the reduction was small, it increased only 20 per cent, while on distances over 46 miles, on which a heavy reduction was made, it nearly doubled.

Here at last we see experiments carried on steadily to a legitimate result by which principles are evolved. A free, untrammelled competition between agents not limited in number would be equally effective, but no such results have yet been arrived at through the spasms of railroad competition. The grand result, therefore, so far as Belgium is concerned, has been all that could be desired. While the state roads have boldly led the way, as in the case cited, in all the reforms which have made the Belgium system famous, they have yet accomplished these great results without injury to the private roads. These have followed the lead of the state roads only as that lead was seen by its results to be safe, and they have proved in consequence far more profitable investments to their owners than the roads in England. As a result of this happy deviation from the strict plan of state ownership originally formed by King Leopold, the Belgian people are better satisfied than any other with the present condition of their railroad system. There is no popular disposition to dispose of the State roads to private parties, and, while the service of the roads in private hands is not manifestly inferior to that of the public roads, there is no danger that the mixed system of ownership which is the essence of the system will be broken up by a popular clamor for a universal assumption of its railroads by the State.

The curious result is thus finally arrived at that the two typical railroad systems have worked round and almost completely changed front. The English system, organized in a complete reliance on competition, is tending both in England and America more and more strongly towards regulation by act of Parliament; while the Belgian, founded on the complete negation of the power of competition under the circumstances, has practically found competition, through a system of mixed ownership, its effective weapon of control. Though to a degree in this way approaching each other, the two systems are still widely divergent, but it can hardly admit of any question that, up to the present time, the railway system in use in Belgium has furnished the community with a far more

efficient and reliable method of controlling and regulating the levying of the transportation tax than has been furnished by the system in use in England or America.

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## CHAPTER III.

### RAILROAD CONSOLIDATION.

CONSOLIDATION and stock-watering are two such prominent features in the development of the railroad system, and have attracted so much discussion, that they merit a separate consideration. Consolidation is one form of that tendency to combination which Stephenson referred to in his aphorism. Combination in some shape, — a union of forces under the influence of an outside pressure, — is one of the certain results of any active competition; it is, in fact, a measure dictated by the instinct of self-preservation. The simple question always is whether the field in which the combination takes place is of a kind which will admit of the union of all the agencies at work in it. If it is, a close monopoly is almost sure to ensue. The laws of competition thus have play just in proportion as these agencies are too numerous for a perfectly united action. The possession of, or at least some small share in a monopoly is always very eagerly craved by the average man, while, on the other hand, the progress of civilization, by multiplying agencies, is continually increasing the difficulty of effecting a perfect combination of any kind. Yet the difficulty which surrounds the creation of a monopoly, and the resource and ingenuity with which the creation of monopolies is pursued, seem to move along with almost equal steps. The modern development of the area of competing industries, for instance, would seem to have rendered any combination of labor in general, to affect its share in the profits of production, a practical impossibility; but, on the contrary, the facility of intercourse between all civilized countries seems to have developed the

possibility of combination to an even greater extent. The consequence is that single associations claim that, from some central office, they will at no remote day be able to control the productions of skilled industry in conflict with capital from the Baltic to the Gulf of Mexico. So it is with transportation. The construction of as many channels of intercourse as mankind saw fit to build would seem to have made any monopoly of intercourse the dream of a visionary. Mankind has, however, at least proved equal to the effort. The operation of the natural law has not in this respect been allowed to pass unchallenged.

The control of the intercourse between the interior basin of the continent, drained by the St. Lawrence and the Mississippi with their affluents, and the sea-board has naturally been the great prize contended for among the railroads of America. Formerly it seemed as though the Erie Canal and the Mississippi River had insured a divided monopoly of this to the cities of New York and New Orleans. Then the railroads broke in upon the dispositions of nature, and, for a time, the monopoly was effectually destroyed. Mankind, however, very shortly rallied its energies, and the old struggle was renewed. Science had now, in a great degree, superseded nature, and the several artificial channels of intercourse and the men controlling them were brought into sharp conflict. Each interest became anxious to strengthen itself, and to secure every advantage over all others; and thus, by degrees, there resulted a race of consolidation, until a very few little groups of men practically controlled the whole railroad system of the country.

There are four great thoroughfares connecting the several Atlantic seaports with the interior of the continent, — the New York Central, the Erie, the Pennsylvania, and the Baltimore and Ohio railroads. A sketch of the development and present position of two of these will afford a sufficiently vivid illustration of one phase, and unquestionably the most striking one in the progress of consolidation.

Eighteen years ago the New York Central Road, which forms

the nucleus of the Vanderbilt combination, was not in existence as a corporation. In 1853 it was chartered, and eleven distinct corporations were merged into it. Five of these corporations, the longest of which could boast but of 76 miles of track, divided among them the 300 miles which separate Albany from Buffalo. The corporation created out of these elements was again, in its turn, merged in 1869 into the larger New York Central & Hudson River Railroad Company, which controls within the State of New York but little less than a thousand miles of track, and is represented by rather more than $100,000,000 of capital. The consolidation, so far, was perfect and had taken place under a State law and within State limits. Growth, however, did not stop here; the combinations of capital simply adapted themselves to the forms of a political system. Beyond the limits of New York, the corporation held, in the eye of the law, no property; it did not control a mile of track. At Buffalo, however, the Central connected with another company, itself made up of four separate primal links which had once connected Buffalo with Chicago, and which had united in obedience to the same law of development which had built up the Central. West of Chicago came yet other links in the trans-continental chain. Three lines competed to fill the gap which lay between Chicago and the eastern terminus of the Pacific Road, — the Northwestern, the Rock Island, and the Burlington & Missouri. In the autumn of 1869 the consolidation of the Central and the Hudson River took place. Immediately afterwards, at the annual election of the Lake Shore & Michigan Southern, the Vanderbilt interest took open possession of that corporation, controlling a majority of its stock. In May, 1870, it in like manner assumed control of the Rock Island and Chicago & Northwestern. The same parties in interest were now practically the owners of a connected line of road from New York to Omaha; there was no consolidation as yet, but, so far as the public and competing roads were concerned, the close of 1870 found the six parties, which but a short time before had been in possession of the trans-continental thoroughfare, reduced to three. With-

out taking into consideration the immense influence which their position necessarily gave to them over other and less powerful members of the railroad system, here was a single combination of capital representing the control of at least 4,500 miles of road and not less than $250,000,000 of capital.

This, however, is but the result of a loose alliance between men notorious for their feuds and their selfishness; the combination is temporary, depending perhaps upon the continued life of one who lacks little of being an octogenarian. The men who control it not infrequently evince talents of a very high order, and their course is made continually interesting by episodes of dramatic surprise. They lack, however, the greatest and most indispensable element of permanent success, — some underlying, indissoluble bond of union. In this respect they differ entirely from the great combination which has gradually taken shape in the neighboring State of Pennsylvania. What is commonly known as the Pennsylvania Central Railroad Company is probably to-day the most powerful corporation in the world, as, indeed, it owns and operates one of the oldest of railroads. Its organization, as compared with that of its great rival, the New York Central, bears the relation of a republic to an empire. Cæsarism is the principle of the Vanderbilt group; the corporation is the essence of the Pennsylvania system. The marked degree in which the character of the people have given an insensible direction to the management of their corporations in these two States is well deserving of notice. In New York politics the individual leader has ever been the centre; in Pennsylvania, always the party. The people of this last State are not marked by intelligence; they are, in fact, dull, uninteresting, very slow and very persevering. These are qualities, however, which they hold in common with the ancient Romans, and they possess, also, in a marked degree, one other characteristic of that classic race, the power of organization, and through it of command. They have always decided our Presidential elections; they have always, in their dull, heavy fashion, regulated our economical policy. Not open to argument, not receptive of

ideas, not given to flashes of brilliant execution, this State none the less knows well what it wants, and knows equally well how to organize to secure it. Its great railroad affords a striking illustration in point. It is probably the most thoroughly organized corporation, that in which each individual is most entirely absorbed in the corporate whole, now in existence. With its president and its four vice-presidents, each of whom devotes his whole soul to his peculiar province, whether it be to fight a rival line, to develop an inchoate traffic, to manipulate the legislature, or to operate the road, — with this perfect machinery and subordination there is no reason why the corporation should not assume absolute control of all the railroads of Pennsylvania.

Such is this great corporation, high in credit in the money-markets of the world, careful withal of its outward repute, apparently unbounded in its resources. Organized so long ago as 1831, it had thirty miles of road ready for operation in the succeeding year. Not until 1854, however, was the Pennsylvania Railroad proper completed. It then controlled the line from Harrisburg to Pittsburg, 210 miles, which had cost a little less than $17,000,000, and was represented by about $12,000,000 of stock and $7,000,000 of indebtedness. This might be considered the starting-point; $3,500,000 of annual gross earnings on a capital a little less than $20,000,000. For many years its growth was confined to Pennsylvania. In 1869, however, its policy in this respect underwent a change, and it burst through State limits, extending its field of operations over the vast region lying between the great lakes and the Ohio upon the north and south, and the Missouri on the west. This sudden development was, as usual, the immediate result of competition, and was almost forced upon the corporation in spite of itself, as a measure of defence. The secret history of the railway intrigues and legislative manipulations of 1869 would make a very singular narrative could the whole of it be disclosed. That year was, in fact, a turning-point in our railway progress. The Erie management had then fallen into confessed discredit, and was beginning

its remarkable attempt under Messrs. Gould and Fisk to carry on a great commercial enterprise in absolute disregard of every principle of good faith, commonly supposed to be at the basis of civilized transactions. Those managing this thoroughfare were desperately thrusting out in every direction, contracting, buying, and leasing all adjoining roads with a rashness only surpassed by their easy disregard of the obligations thus contracted. Early in 1869 they sought to cut off the connections of the Pennsylvania road and to shut it up within the limits of that State. For a brief time the battle seemed to go in their favor, but suddenly the tide turned. The result showed that they were no match for the powerful antagonist they had provoked; — their overthrow was so effectual as to have in it some elements of the ludicrous. Bills in the interest of the Pennsylvania company, which it was doubtful if it were in the power of any legislature to pass, were pushed through their various stages, and received executive approval, with a speed unprecedented; contracts, arranged with the Erie managers by boards of directors, were unexpectedly rejected in meetings of stockholders; and for a time this irresistible power even threatened to wrest from the Erie road its own peculiar and long-established connections. The result of these operations was that the Pennsylvania Central soon controlled by perpetual lease a whole system of roads radiating to all points in the West and Southwest. By one it reached Chicago, by another St. Louis, and by a third Cincinnati. At Indianapolis it had absorbed a network of routes; at Chicago and St. Louis it had formed close connections looking directly towards the Pacific. Here for a time it rested, declaring that its policy did not look to any expansion beyond the Mississippi. The corporation rested, perhaps, but not the ambitious men who controlled it; their individual operations now commenced. They obtained the control of roads endowed with vast land grants in Michigan and in Minnesota; they were the directors of the Northern Pacific; and when the men who had constructed the Union Pacific broke down under the multiplicity of their engagements, the first vice-president of the Pennsylvania road ap-

peared as the new president of that road also. The very land grants belonging to the companies these men now controlled amounted to 80,000 square miles, or an area equivalent to the aggregate possessions of four of the existing kingdoms of Europe.

Meanwhile the Pennsylvania Railroad Company, distinct from its individual directors, now owned or held by lease 400 miles of road in Pennsylvania, and directly controlled 450 miles more, almost entirely within the same State; beyond its limits it leased and operated nearly two thousand miles in addition, holding the stock and bonds of railroads, canals, towns, and cities, like some vast *Credit Mobilier;* it had, indeed, no less than $20,000,000 standing on its books as represented by these investments. In the sixteen years its own capital and indebtedness had swollen from $20,000,000 to $65,000,000, with a liberty secured to increase them to nearly $100,000,000; at the same time the system of roads which it held in its hands returned a yearly income of hardly less than $40,000,000, of which about $10,000,000 was claimed as net profit.

If, however, as its direction had officially declared, the corporation had no distinct interests to push west of the Mississippi, the same could not be said of the region east of the Susquehanna. In the closing days of 1870 New York was suddenly startled by the announcement that the Pennsylvania Railroad had effected a perpetual lease of the whole famous railroad monopoly known as the United Companies of New Jersey. The rumor proved true, and some 450 miles of additional track, besides 65 miles of canals and some 30 steamers, in all some $35,000,000 of property was by this transaction added to the vast consolidation, and brought it to the shores of New York Harbor.

It is unnecessary to consider how much further this combination will carry its operations, or in what they will result. The Pennsylvania road now controls directly and as itself owner or proprietor, and wholly distinct from its directors, more than 3,000 miles of track, claiming to represent

$175,000,000 of securities, and returning a gross income of at least $40,000,000 per annum. It is far from impossible that this combination may from its very magnitude lead to its own downfall. The leasing of roads has not generally proved a source of profit, and there are indications that the Pennsylvania Railroad Company will not find its own case an exception to this rule. Upon the leases of four roads, which netted a gross income of over $15,000,000 in 1870, the returns seemed to indicate a profit to the leasing corporation of only $128,000; while, estimated upon the returns of the year previous to that in which the lease was made, the New Jersey contract would seem to involve a heavy annual payment in excess of net receipts. For years a general crash in the American railroad system has been very commonly predicted. Those are not wanting who now confidently insist that the shadow of the United States Bank rests heavily upon the Pennsylvania Railway, and that the closing pages in the histories of the two institutions will not be dissimilar. Should this apprehension prove true, the crash, when it comes, will probably be coincident with the fall of the Pennsylvania consolidation.

Meanwhile, whatever the future may bring forth, it is impossible to repress a feeling of admiration, mixed with vague alarm, at the steady massive growth of this corporation. Its method of procedure is so silent, so organized, and so sure, that it has already cast a spell over the mind and conscience of the State which created it. Compared with the magnitude and order of its proceedings, the results achieved by the other combinations seem but the freaks of stock-jobbers. The Pennsylvanians are reducing consolidation to a science and mastering the whole subject of transportation, while their various rivals are dabbling in railroads and amassing individual fortunes. As between the two combinations the growth of which has here been sketched, it would seem not unsafe to predict that the solidity of the latter company is almost certain ultimately to overcome the *élan* of the former.

Only one phase of consolidation is as yet presented in the great east and west thoroughfares, — the consolidation brought

about through the stress of competition. No consolidation of the competing thoroughfares has hitherto been effected, though several times it has been attempted. Instances of this on a smaller scale are, however, by no means wanting, and perhaps no combination in the whole history of the railroad system, has ever been more suggestive than that effected in the winter of 1870 – 71 among the anthracite coal-roads of Pennsylvania; it illustrated in almost every possible way both the fallacies of railroad competition and the inefficiency of the attempts hitherto made to secure the railroad monopoly from abuse through legislation.

The production of anthracite coal had increased, under the influence of an artificial stimulus, from one million tons in 1842, up to nearly seventeen millions in 1870. The country did not really require such a production, and the usual severe struggle ensued as supply and demand sought the same level. There were four parties in the field, — the consumers, the miners, the coal companies, and the railroads. The consumers alone could not combine; all others could and did. The miners combined for an increase of wages, and refused to produce; the coal companies combined against excessive freights, and refused to forward; the railroad corporations combined to raise freights, and refused to carry. The inevitable results ensued; coal in the same market fluctuated many hundred per cent; the miners starved, the coal companies failed, and the railroads became unprofitable. There was but one way out of the difficulty, — a closer combination between two of the contending parties to secure a mastery over the third. The coal companies and the railroads accordingly combined, and the railroads became the largest owners of mines.

The contest was now a simple one between labor and capital. Between 1867 and 1870 the struggles and consequent fluctuations were incessant; there was a constant recurrence of strikes, resumptions under agreement, violations of agreement, and suspensions of production. The parties then resorted to amicable arrangements, by which strikes were pretended, and surplus coal was sold off to consumers at panic

prices under the fear of an impending scarcity. This, however, was a trick which would not bear frequent repetition, and when, at last, in 1870 it became evident that production was again in excess of consumption, and that a glut was impending, the two parties drew together their forces for a decisive conflict. The miners struck for what they considered a remunerative basis for their labor, and the companies combined to starve them out. They not only ceased to produce from their own mines, but they trebled their freights, and thus put a stop to production by all others. The result was not only great inconvenience and suffering throughout the country, but a violent disturbance of industry, and, in Pennsylvania, there resulted almost a condition of civil war.

So far the efficacy of railroad competition alone was illustrated, — but in Pennsylvania, as elsewhere, legislation had sought to make good all possible deficiencies in the working of natural laws. Recourse was had to the statute-book, and the charters of the corporations were eagerly examined. The corporations, it will be remembered, not only insisted upon stopping all production from their own mines, but they also, through prohibitory tariffs, put a practical stop to production from all other mines. As transporters of a commodity they once for all undertook to regulate both demand and supply as regarded that commodity. A long conflict before the legislature ensued, and the effect of the law was discussed. It was found that, in the charters of the roads, the amounts which could be charged as "tolls" were alone limited. The courts had held long before, and when the question had come up in a different connection, that "tolls" were a mere charge on the passage of a person or article over a road or through a canal, where no service in aid of such passage beyond furnishing the thoroughfare were included; where the party owning the thoroughfare likewise furnished the means of transportation a further sum as freight could be charged, no limit to which had been assigned by law. In other words the law provided only for the use of the road, and not for services as a common carrier.

The railroad combination was thus left master of the field, and it only remained for the courts, after slow process, to reaffirm or reverse their former decision. For the time being the combined companies had carried the day. It would be futile, however, to suppose that this is the end of the difficulty in Pennsylvania. At the present time the question as to the intent of the law is again before the courts. The carrying it there was a very dangerous move on the part of the railroad companies, for whatever the result may be it may safely be predicted that they have pushed their reserved rights too far. The difficulty lies beyond the reach of any court of law; it will be found to be nothing less than the breaking down of the guarantees hitherto relied upon to protect the community against the abuse of great powers by private monopolies. It required just such a combination of circumstances as exists in Pennsylvania to raise this question. Elsewhere it has only threatened; here it must now be confronted.

The examples of combination hitherto discussed have been those of a more elementary nature, — those which would naturally be looked for in the earlier and less complex days of a system. It is extremely unlikely, however, that this process will stop with the permanent consolidation of certain connecting lines, as in the case of the Pennsylvania Central, or in the temporary combination of certain competing lines, as in the case of the anthracite coal railroads. Indications are not wanting that the forms of concentration hitherto described are but one, and not the most significant, phase of the working of general law. It is the one which most effectively and dramatically presents itself to the public, but it is not improbable that a more important revolution is now in rapid progress. Properly to understand the origin and possible scope of this movement, a retrospect is necessary.

What is known as the express system of America is a very peculiar and convenient, though expensive, organization, wholly the creation of this country and of the present generation. The men who have since given their names to immense companies, wielding millions of capital, began their brilliant careers in a

very modest way. To the Harndens belongs the credit of originating the business. They began operations in 1839, passing to and fro between Boston and New York, carpet-bag in hand; but that carpet-bag was big with the express system of America. At first they undertook little more than to carry money, letters, and valuables, to make collections, and to see to the delivery of very small parcels between the two cities; but the carpet-bag soon expanded into a trunk; the trunk developed into a crate, and each new crate contained more and more cubic feet until at last they became freight-cars, and the managers grasped at the internal carrying trade. For several years the receipts of the route between Boston and New York hardly exceeded fifty dollars a day, out of which fares, salaries, office-rent, wages, and costs of delivery had to be paid. The machinery, however, was needed; new lines were organized, opposition started up, and, when Harnden died in 1845, only thirty-three years old, the business was practically as fully developed as it is to-day. In 1868 there were over 3,000 licensed express carriers and agents in the country, paying an Internal Revenue tax on more than $22,000,000 of gross receipts. Even as early as 1845 the organization had brought about a division of the carriage of freight. The most valuable and remunerative part of it, the carrying of all small and valuable packages, which demand little room and pay heavy rates, had passed out of the hands of the railroads into those of the express companies. At one time the system seemed likely to monopolize, by means of its despatch lines, the whole business of "time freights," and to draw to itself the carriage of all articles, no matter how bulky, on which persons were willing to pay the price necessary to insure speedy delivery. The wealth of the companies was so great, and their influence ramified so far, that the management of railroads in a great degree passed under their control. Officers of the latter corporations suddenly found themselves considerable holders of express stocks, or openly received bribes. The result was that some of these officials observed with indifference, or even connived at, the great inroads which

the express system was making on the legitimate freighting business of their lines, and nothing was practically done to check the rapid growth of the express companies, until the system of "time freights" was inaugurated by the railroads themselves, in 1858. This was the first step taken by them towards the resumption of their legitimate business, and this was forced upon the roads by the strenuous exertions of business men. The system of time freights once inaugurated, the attention of railroad managers was soon aroused to the possible profits to be derived from its development. Naturally, this development took the form of a job. Certain men, controlling great through lines, conceived the idea of forming a company which should be nothing more than an immense freight express line, owning its own cars and charging its own prices, while the railroads were to supply only road-beds and motive-power, and charge tolls for drawing cars over their lines. The system of moving freights by canal, in accordance with which all the original railroad charters were drawn, was in fact revived and applied to railroads. This scheme promised to carry to the last possible point of development the express system. The business of carrying freights in their own interest was to be surrendered by the railroad companies, who were henceforth to devote themselves to the transportation of passengers and the dragging of freight-cars. If properly instituted, and regulated with thorough impartiality, with a view to a perfectly free competition between firms engaged in the shipping business, such a system would not be without its advantages. It would create a division of labor, and, if favoritism were excluded, would tend to stimulate competition. It was, however, brought forward with no such views. The men who devised it controlled the roads over which it was to be put in operation. Competition was the last thing they had in view; on the contrary, they proposed to monopolize in their private hands the whole lucrative business of time freights. It was an immense job. The credit of defeating this ingenious plan belongs, it is said, to the president of a leading New England road. His concurrence in the enterprise was essential to its

success; but, when the plan was submitted to him, he refused to have anything to do with it, except in his official capacity and in the interest of his road. He saw at once the great importance of the scheme, and how profitable it might be made, but he insisted that the roads, and not individuals, should be the parties to it, and that to them all the profits should accrue. This action on his part ultimately led to the formation of the earliest of what are known as the "colored lines." It was organized in 1865, and was substantially a corporation within a corporation. Certain contracting roads between the west and tide-water combined in contributing a number of cars, all of which were to be distinguished by a uniform color. These were to transport freights, under special conditions, from any point of reception to any point of delivery on the connecting roads. The machinery for the collection and disbursement of money was the simplest possible. A clearing-house was established, the duties of which were confined to keeping a record of the miles run by the cars of the various roads in the combination, and to striking, accordingly, a balance of credit or debit each month. A small percentage upon the amount invested was then charged for wear and tear, and a balance-sheet forwarded to each company. All transactions in regard to freights were settled in cash when they took place, and no receipts were returned to the clearing-house. A business involving millions each month could thus be done on the payment of trifling monthly balances. The growth of this system has been one of the marvels of railroad development. So far as the business of transporting freight is concerned, it will be seen at once that these organizations effected a practical consolidation of all the roads interested in them. The result hitherto has been one of almost unmixed good. Responsibility was secured; consignees were no longer bandied about between numerous disconnected forwarders, each one of whom shoved liability off upon his neighbor. Promptitude, also, was secured by the introduction of time contracts, and, with simplicity, of course came economy.

There are three peculiarly significant features in the history

of these organizations, — the creation of corporations within corporations, the establishment of a clearing-house, and the rapid growth of the system. It is not impossible that these innovations may result in a revolution of the freighting business, perhaps of the railroad system. The essential feature of the organization is the combining of roads, whether competing or connecting, through the machinery of a clearing-house. This once established, the extent of its possible development cannot be forecast. If a corporation within a corporation, including, as it easily might, a central tribunal practically empowered to enforce its own judgments should gradually be developed out of this beginning, it is more than probable that the days of railroad competition would be numbered. It is absurd to suppose that, after the creation of such a central power, the force necessary to make its decision effective would be wanting. No single member, however powerful, of a combination of the sort suggested, could afford to rebel, when the immediate result of so doing would be that it would be thrown out of the clearing-house and its connections cut.

Neither will it be possible to meet by legislation such a contingency as that suggested. Congress or State legislatures may, indeed, enact by statute that connecting roads shall receive freights from or deliver them to any recusant line ; but here their power stops. They cannot by any law, no matter how stringent or cunningly devised, control the direction which may be given to the immense mass of freight which merely seeks a transit from one part of the continent to another; neither can they dictate as to the use of rolling-stock, which includes the vital-point of breaking bulk. Both of these matters obey a law of their own, and merchandise once passing under the control and into the cars of a combination, will, of necessity, follow the channel into which it is directed. No relief could be found from this quarter, even supposing that a combination wielding the immense political influence which would be possessed by that suggested could not regulate legislation to suit itself. The present time-freight lines may, therefore, contain the germ of that consolidation which shall weld

the railroad interests together as one body, and give to them the unity and concentration which hitherto they have notoriously lacked. This result of the experiment of 1865 would seem by no means so unlikely as that from one carpet-bag in 1838 should spring the present express system of America.

It is much the custom among those who discuss this consolidating phase in the development of a great system to denounce it as an unmitigated commercial and political evil. It remains to consider whether these judgments are fully warranted. So far as the interests of commerce and of intercourse in general are concerned such conclusions do not seem to be sustained by a calmer examination of the results in so far as they are yet developed. On the contrary, it may safely be asserted that, taken as a whole, the advance hitherto made in the direction of a closer and more perfect combination has been highly beneficial to the best interests both of trade and of travel. All declamation to the contrary notwithstanding, this conclusion hardly admits of a doubt. Even in the case of the Pennsylvania coal combination, unjustifiable as in many respects it was, so far as the material interests of the whole country were concerned a responsible combination even of monopolies, insuring a steady supply at regular prices, was preferable to the chronic chaos previously existing. This case, however, was purely exceptional. As a general rule it will scarcely be maintained that it is to small, local or disconnected lines that the public now looks for the last conveniences and comforts of travel, or for the most prompt and cheapest transportation of freight. On the contrary, it is only the consolidated corporations whose means admit of that freedom of expenditure and minute division of labor which is essential to perfect ease of modern movement, whether of merchandise or of persons. It may in fact be broadly stated as a general rule, to which no exceptions exist, that, wherever there is a break in management in the railroad system, the intercourse of the community experiences a jar or shock, the sense of which is lessened in the exact degree in which such break of management is overcome by a closer connection.

It may be argued that this applies only to the combination of connecting, and not to that of competing lines. It is by no means clear, however, whether, when fairly considered in all its aspects, even this distinction is well taken. The subject has already been somewhat discussed in its connection with railroad competition and the practice of "pooling profits." On the one side are to be estimated the decided advantages of the superior promptness and convenience, the desire to secure every improved appliance, whether of comfort or safety, which results from a competition, which, in these respects, is always felt, and also the more modified advantage of charges which are occasionally unduly low; — upon the other hand, it is to be remembered that competition is confined to points of convergence, that excessive local rates always make good depressed through rates, that violent fluctuations characterize sharp competition, and, finally, that the absence of responsibility must perpetuate every abuse. Even upon this point we are by no means without a practical experience. No people ever enjoyed more fully the advantages of competing lines than did the inhabitants of certain portions of the State of Vermont during the long struggle between the Vermont Central road and the Rutland & Burlington; each of these corporations strove for years to steal business from the other, and illustrated every feature of railroad competition. After more than fifteen years of disturbance, during which the people, whom the roads were built to accommodate, were sacrificed to their quarrels, the companies at last consolidated amid public rejoicing. The war of through competition and local suffering was over, and one uniform, responsible management gave some assurance that the railroad service of a whole community should cease to be the shuttlecock of angry combatants.

Neither are the political considerations connected with these vast corporations often fairly considered. The evils under our form of government connected with railroad legislation, in any shape, cannot easily be overstated. It is very questionable, however, whether they are aggravated by the existence of great consolidations. One fact is to be borne in

mind. If the political power of the large consolidation is great, so also is the jealousy and apprehension excited by it. In this respect also, there comes in the important element of responsibility; — the great corporation presents a point upon which the force of public opinion can be concentrated; — it thus bears with it its own element of weakness. This is not the case with smaller companies. They can and do combine for political action with most pernicious results to the public; but in this case, though the power is in reality greater, the responsibility is wholly divided away. What is known as "log-rolling" is probably the most familiar form of legislative corruption in general use in America. No bribes are paid, no money changes hands, but a regular truck-and-dicker of votes takes place, through which wholly incongruous schemes are lumped together and passed, regardless of opposition. In this contemptible science the lesser railroad corporations are apt to be the most thorough proficients. Each has its little band of friends, and each is apt to want its rag of special legislation. Individually, they are powerless, but in combination with the friends of every other doubtful measure they are irresistible. Their obscurity is their great protection. From behind it they raise the cry against the larger companies, concerning which a jealousy is known to exist, and, while the public attention is absorbed in another direction, they quietly secure their plunder. To a large corporation, on the other hand, there attaches in some degree that responsibility which belongs to a high public official. Its agents are known, its operations are jealously watched, it can be held to a public account. Where, in short, it would be perfectly feasible for the community to meet and control a single agent, all experience goes to show that a dozen may run riot.

As regards the consolidation of railroads, therefore, the case may be summed up somewhat as follows. Both railroad combination and railroad consolidation, are the legitimate and inevitable consequence of railroad competition, and, as such, like all other phases of natural development, are not easily to be restrained by legislative enactments. That they may not result

in serious political and material complications is by no means clear, but these are not likely to be of the character hitherto anticipated. If, as now seems to be the case, the exigencies of our civilization force upon us this concentrating process, there must ultimately result a condition of things which can be resolved only in one of two ways; — either the community, as it has already done in certain of the States, must face, and endeavor to control, a recognized railroad monopoly in responsible private hands; or it must directly, in a greater or less degree, take part in its management, thus recognizing the control of the railroad system as one of the necessary, and for that reason, legitimate functions of every government. At present, as respects consolidation, both the railroad system and public opinion are in a state of simple confusion. Vague denunciation and crude statute enactments have hitherto usurped the place of reason and mature action, and it now remains to be seen what effect they will have upon a development which they may distort but cannot prevent.

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## CHAPTER IV.

### STOCK-WATERING.

PROPERLY speaking stock-watering is the reappraisal by its owners of a corporate property which has, or is alleged to have, increased in value on their hands, without any new outlay upon their part, and the issue to themselves of new evidences of value equal to such supposed increase. It is indisputable that, as regards railroads, this practice has been not infrequently very grossly abused, especially of late years, and that these abuses of it now impose a very heavy additional burden upon the cost of transportation. Fraudulent and secret issues of stock by corrupt managements or dishonest officials have also contributed to this result, but the transaction in this case differs from strict stock-watering in much

the same way as the money of counterfeiters differs from excessive issues by government of irredeemable legal tenders. Both processes directly inflate the volume of the securities which represent the value of the railroad system, and, in so far, constitute stock-watering, but while the first is, strange to say, legitimate in character, the last is a mere fraud.

In America, as in England, the private corporation owning the thoroughfare is the basis of the whole railroad system. In thus surrendering the control of this system out of its own hands, the community as a rule made one and but one reservation in its own favor; it was almost universally stipulated that the rate of profit upon the capital invested in the work of construction should not exceed a certain annual percentage, varying, according to locality, from 10 to 20 per cent. Within this limit the corporations were free to earn and to divide all that they could.

This constituted the railroad usury law, and like all usury laws was an exceedingly clumsy contrivance. It had two obvious defects; no provision was made for ascertaining the real, as contradistinguished from the nominal cost of any road, and nothing was said in regard to arrears of unpaid dividends. It was absurd to suppose that even the most honest capitalist would accept the strict construction of a law which insured him a certain loss in each bad year or unprofitable enterprise, and limited him in case of success to a reasonable profit. Of course, therefore, the law was no sooner enacted than it was circumvented. How this was done in England has already been stated, but it is in America that the process has been conducted on the most magnificent scale. The principle operated upon in both countries was the same. The doubt raised was whether the stipulated percentage was to be paid upon what the property cost its holders, or upon what it was actually worth. Interpreting it in the way last specified, the capitalist proceeded to act accordingly. The result as a whole bids fair to be most disastrous, and yet, in not a few cases, it is very difficult to take any just exception to it. Many roads were constructed, and proved, if not commercial failures, very

gradual successes; for years no dividends were paid, — the money which should have gone to dividends, which rightfully belonged to the capitalists, was absorbed in construction. Fairly speaking, this was so much new capital belonging to the owners, and by them invested in the enterprise; just as much so as if the allotted dividends had been paid to the stockholder and by him instantly handed back to the treasurer of the company. In the vast majority of other cases very small dividends were paid, far below the limit fixed in the law, and the balance found its way into construction. In all of these instances heavy arrears accumulated against the property, and these arrears might fairly and justly be claimed as capital, actually paid in, and which should be represented by evidences of value. Wherever stock was issued under such circumstances the operation would not seem justly open to criticism. The difficulty was that no provision whatever had been made in the law to meet the case. It therefore devolved upon the owners of the property to cast up the balance-sheet themselves, and to decide all nice points, undoubtedly in their own favor. Where a people so provides for its own interests it needs no prophet to foretell the consequences. No landlord deals in this way with a tenant.

The history of the companies which have been consolidated into what is known as the Pittsburg Fort Wayne & Chicago Railroad, furnishes a very fair illustration of what may be expected to ensue from this disregard of ordinary precautions. Here the process of watering was early commenced, as a simple and desperate expedient for raising money at an enormous discount for the purpose of completing an enterprise of doubtful success. In the earlier history of one of these companies we read: "The stock subscriptions which were paid in cash into the treasury of the company were very small, — amounting perhaps, in all, to less than three per cent on the final cost of building and equipping the road. The stock subscriptions were paid for mostly in uncultivated lands, farms, town lots, and labor upon the road." Of the whole road as it stands we are told, that, "of the $18,663,876,

now representing the cost of the road and equipment, &c., the shareholders contributed in cash only about ten per cent, or less than $2,000,000; and their contributions in cash, bonds, notes, lands, and personal property, labor, &c., amounted to something less than $4,000,000, or rather more than twenty per cent of the present cost of the work. The difference between this sum and the capital stock as now shown by the books of the company, is made up of dividends which were *paid in stock*, interest on stock *paid in stock*, premium on stock allowed to stockholders at the time of consolidation, which was *paid in stock*, and a balance of stock still held by the trustees.

This, however, was in the early days of the enterprise, the days of doubtful success, when the stock was thought worthless, and was almost given away. But in 1866 a new era dawned upon the Fort Wayne road; it began to pay dividends. In 1870 the stock of the company, the history of a portion of which has just been given, stood at $11,500,000, while its indebtedness amounted to about $13,600,000 more, being in all some $1,150,000 above the cost of road and equipment as they stood upon the books of the company. In June of this year, a lease was effected of the entire property by the Pennsylvania Railroad Company. The Fort Wayne stockholders had their option between annual dividends of 12 per cent on the stock then in existence, or the more moderate rate of 7 per cent on a proportionately increased amount. They wisely chose the latter, and forthwith the $11,500,000 of stock became $19,714,000, — while the road which was claimed to have cost only $24,000,000, was suddenly represented by $33,400,000 of securities, none of which bore a less interest than 7 per cent.

The great masterpieces of Commodore Vanderbilt have, however, so eclipsed all other performances in this line that they may be said to constitute an epoch in the history of paper inflation, — it might also be said of bubble-blowing. It is only necessary, therefore, in this connection, to recount the history of the chain of roads, now reduced in number to two, which

connect New York and Chicago by way of Albany. The distance between these points is 982 miles. It is useless to begin the story further back than 1852, when the through line was completed, consisting of sixteen independent links, several of which were themselves made up of numerous smaller and once independent roads. That was a year of active and much needed consolidation. The New York Central led off under a special act of legislature. Eleven roads went into the consolidation with an aggregate capital of $ 23,235,600. The stock lowest in value of the eleven was settled upon as the par of the new concern, and the stocks of the other ten companies were received at a premium varying from 17 to 55 per cent. By this simple financial arrangement, $ 8,894,500 of securities, of which not one cent was ever represented by property, but which in reality constituted so much guaranteed stock, was made a charge, principal and interest, against future income. This was the price paid to get rid of the vested rights which had been allowed to settle down upon this thoroughfare. Between 1852 and 1868 the stock and indebtedness of the consolidated company had been increased, for one reason or another, until, when Mr. Vanderbilt became president in the latter year, they amounted in round numbers to $ 40,000,000, representing a road which its construction account showed had cost $ 36,600,000. Vanderbilt had for some years been president of the Hudson River road, and, as such, in 1867 had doubled its capital stock, ($ 7,000,000), calling in 50 per cent of the increased amount and thus watering to the extent of $ 3,500,000. Extending his control over the Central, he now proceeded to better his previous instructions. A stock dividend of 80 per cent, not a dollar of which was called in, was suddenly declared. Over $ 23,000,000 of securities were thus created at once. Operations stood still at this point, but only for a moment. The next measure was a consolidation of the Central and the Hudson River railroads. This was effected in the succeeding year upon a stock basis of $ 90,000,000; — a further watering of 27 per cent being allotted to the Central,

while the turn of the Hudson River road now having come again, there was provided for it the munificent amount of 85 per cent. The result of these astounding feats of financial leger-demain was that a property which in 1866 appeared from its own books to have cost less then $50,000,000, and which was than represented by over $54,000,000 of stock and indebtedness, was suddenly shot up to over $103,000,000 in 1870, upon the whole of which interest and dividends were paid. At the same time the cost of the road stood upon the books of the company at less than $60,000,000, or about $70,000 per mile, while in evidences of property each mile was charged with no less than $122,000. The average cost of railroads throughout the world has been somewhat less than $100,000 per mile, while in America it has stood at about half of that amount. According to the books of the company over $50,000 of absolute water has been poured out for each mile of road between New York and Buffalo.

The next step towards Chicago was one of 88 miles to Erie. This was made up of a consolidation of two roads effected in 1867, which went in with $2,800,000 of capital and came out with $5,000,000. The total capital account of the company was then a trifle over $3,200,000. In 1869 the consolidation of the lines between Buffalo and Chicago was effected, and this road became a party to it with $6,000,000 of stock and $4,000,000 of indebtedness, — at least 30 per cent of water in excess of all cost of construction.

The next step in the line is one of 96 miles to Cleveland; this was filled by the celebrated Cleveland Painesville & Ashtabula road, which in the six years between 1862 – 67 divided 120 per cent in stock, 33 per cent in bonds, and 79 per cent in cash. Having really cost less than $5,000,000 in money it was consolidated at nearly $12,000,000.

The next step was from Cleveland to Toledo, 148 miles. Here it was that Vanderbilt began his operations, for in 1866 he secured possession of this road and signalized his administration of its affairs by the issuing of a scrip dividend of 25 per cent upon its $5,000,000 of capital.

The last two roads were consolidated into the Lake Shore road, 258 miles in length, in 1867; the stock and indebtedness of the new company was $22,000,000. In 1869 the work of consolidation was perfected from Buffalo to Chicago by the merging of all the connecting links into the Lake Shore & Michigan Southern Railroad Co., operating nearly 1,300 miles of road, represented by $57,000,000 of stock and indebtedness, which was increased to $62,000,000 in 1871, and which it had the further privilege of increasing to about $73,000,000. These figures throw a very curious light upon the real cost of railroad construction in America. They represent a nominal outlay of but $48,000 per mile, and yet it is not denied that in the amount was included $20,000,000 of fictitious capital. These roads, not improbably, may have cost those who constructed them in cash, actually paid in either directly in money or in dividends which had never been drawn out, the full amount of the consolidation capital. The profits had, it is true, been very unequally divided, but substantial justice was done in the end; what had been lost in one road was made good in another, but as a whole the community was, perhaps, paying for nothing which it had not received. No credit on this account is due to those managing the affairs of the company. They undoubtedly regarded the Vanderbilt operations as masterpieces of railroad management, and only regretted that the earnings of the company under their control could by no possibility justify any similar performances; and yet the contrast between the results hitherto arrived at upon this line, under a system of moderate, average watering, and those achieved further east by Vanderbilt is singularly suggestive. It is probably safe to say that the Vanderbilt stock-waterings between Buffalo and New York annually cost the American people not less than $3,000,000 in excess of all remuneration which ever under any construction of right belonged to the owners of the lines. Under these circumstances it would seem, judging by the example of the Lake Shore road, that comparatively legitimate and reasonable waterings should satisfy any one not inordinately rapacious.

The science of stock-watering as thus far described had not yet, however, attained perfection; in fact had not gone beyond the English precedents. What might be called the American system remains to be described. The stock of corporations is in this country given away as a sort of gratuity, — the right to direct railways and to tax trade is habitually thrown in as a makeweight. In the earlier days of railroad financiering it would naturally have seemed almost impossible to accomplish such a result, but time and experience brought even this about. It originated in the system of railroad mortgages. Very early, and very naturally in the immature days of the system, attempts were made to construct railways upon an insufficient capital. Funds gave out before the enterprises were half developed, and projectors had their election between abandonment or progress at any price. The obvious resource was to mortgage the property already in existence. Soon the market was weighed down with every conceivable description of railroad security. First there was a floating debt; then preference stock, to be followed in rapid succession by first, second, and third mortgages; construction and equipment bonds closing up the dreary procession, which not seldom ended at the tomb of a receivership. All these evidences of indebtedness were, however, secured on property really in existence. The art was not at once discovered of mortgaging something thereafter to be created. Presently new roads were projected, the business of railroad construction and financiering being now reduced to a system. The country through which these roads were to pass was young and poor, and capital had to be brought in from outside. There was abundance of it, but the risk involved was great, and the temptation to incur it must not be small. In the first place, the new road as an enterprise promises well. The next thing is to raise the money necessary to construct it. This is done, not by laying an assessment upon the stock, — that is not heard of as yet, and has no value in the market, — it exists only in name. In place of this, the bonds are put upon the market at a stated price, which, or a portion of which, is

advanced by the capitalist, and construction is carried on with the proceeds. The stock itself then passes as a gratuity into the hands of those advancing money upon the bonds. The result is, that by this ingenious expedient the capitalist holds a mortgage, paying a secured and liberal interest, on his own property, which has been conveyed to him forever for nothing. The stock is at once nothing and everything. Given away, the donees own and manage the road, and, receiving a fixed and assured interest upon their bonds, enjoy a further right to exact an additional sum, and one as large as they are able to make it, from the developing business of the country, as dividends on the stock. Instances of this form of railroad financiering need not be specified, for it is now the common course of Western railroad construction. The new country needs its railroads, and is willing to pay anything for them, while the capitalists of the old country specify their own terms of construction, which are only too eagerly accepted.

So far as those immediately involved in these transactions are concerned no exception can be taken to them. Both are fair and equal contracting parties, and both understand the bargain they make. The occupant of the new country wants his railroad, and the capitalist is asked to embark his means in an enterprise full of risk. They both make the best terms they can, but the terms are made in advance; there is no fraud and no chicane. While, therefore, the contract is not unfair as a private transaction, as a matter of public policy such a method of railroad construction cannot but excite very lively apprehensions for the future. The community, in its over eagerness to stimulate construction beyond all healthy limit, is continually binding itself to conditions which hereafter it will find very hard to fulfil.

The absolute disposal of the control of a road and all its securities, on condition that it is built, would seem to be a contract of a sufficiently sweeping nature, and it certainly marks the limit of legitimate railroad construction. Not seldom, however, the embryotic enterprise is bolstered up

extraneously. Simple mortgages are not sufficient, and the credit of the road is guaranteed by land-grants, or by national or state or town or county loans, or by the credit of connecting or established lines, or by any or all of these combined. Every expedient which the mind of man can devise has been brought into play to secure to the capitalist the largest possible profit, with the least possible risk. The Pacific Railroad furnishes a fine example of all these ingenious devices. In speaking of this enterprise it is not pleasant to adopt a tone of criticism towards the able and daring men who with such splendid energy forced it through to completion. It was a work of great national import and of untold material value. Those who took its construction in hand incurred great risk, and at one time trembled on the verge of ruin. This enterprise was to them a lottery, in which they might well draw a blank, but, should they draw a prize, the greatness of the prize must justify the risk incurred. The community asked them to assume the risk, and was willing to reward their success. Success was thought to be well worth all it might cost. At the same time the process of construction afforded a curious example of the methods through which fictitious evidences of value can be piled upon each other. The length of the united road was 1919 miles, and the cost of construction was estimated at $60,000,000. To meet this outlay a stock capital was authorized of $100,000,000 for each of the two great divisions of the line; upon this, however, no dependence was placed as a means of raising money; it was only a debt to be imposed, if possible, on the future business of the country. A curious mystery hangs over this part of the financial arrangements of the concern. Probably not $20,000,000 ever has been, or ever will be, derived from this source. The rest is very clear. There was the government subsidy of $30,000 a mile, and $30,000 a mile of mortgage indebtedness; there was a land grant of $12,800 acres a mile, and, where there were States, there were bonds, with interest guaranteed by the State and gifts of real estate from cities, where cities existed; and there were even millions of net earn-

ing applied to construction. The means to build the road were not grudgingly bestowed. Meanwhile, of the real cost of construction but little is correctly known; absolutely nothing indeed of the western division, or Central Pacific. Managed by a small clique in California, the internal arrangements of this company were involved in absolute secrecy. The eastern division was built, however, by an organization known as the Credit Mobilier, which received for so doing all the unissued stock, the proceeds of the bonds sold, the government bonds, and the earnings of the road, — in fact, all its available assets. Its profits were reported to have been enormous, and they made the fortunes of many, and perhaps of most of those connected with it. Who, then, constituted the Credit Mobilier? It was but another name for the Pacific Railroad ring. The members of it were in Congress; they were trustees for the bondholders, they were directors, they were stockholders, they were contractors; in Washington they voted the subsidies, in New York they received them, upon the Plains they expended them, and in the Credit Mobilier they divided them. Ever-shifting characters, they were ubiquitous, — now engineering a bill, and now a bridge, — they received money into one hand as a corporation, and paid it into the other as a contractor. As stockholders they owned the road, as mortgagees they had a lien upon it, as directors they contracted for its construction, and as members of the Credit Mobilier they built it. What is the community to pay for it?

At the close of 1870, with $103,000,000 of their capital yet unsubscribed, and thus reserved for issue, should the earnings of the roads at any future period make watering practicable; with this amount of stock in reserve, the two companies operated 2,083 miles of road, represented by stock and debt to the amount of $240,000,000. Thus the last results of Vanderbilt's genius have been surpassed at the very outset of this enterprise. The line from Chicago to New York represents now but $60,000 to the mile, as the result of many years of inflation, while the line between Omaha and Sacramento begins life with the cost of $115,000 per mile. It would

be safe to say that the road cost in money considerably less than one half of this sum. The difference is the price paid for every vicious element of railroad construction and management; costly construction, entailing future taxation on trade; tens of millions of fictitious capital; a road built on the sale of its bonds, and with the aid of subsidies; every element of real outlay recklessly exaggerated, and the whole at some future day is to make itself felt as a burden on the trade which it is to create.

Enough has been said to illustrate the bearing which stock-watering and extravagant construction have upon taxation. It would be useless to attempt to estimate the weight of the burden imposed through these means upon material development. The statistics which should enter into any reliable estimate are not accessible, and any approximation would be simply a matter of guess-work. A table was published, during the year 1869, in a leading financial organ,* comparing the capital stocks of twenty-eight roads as they stood on July 1, 1867, and May 1, 1869. During those twenty-two months it was found that the total had increased from $ 287,036,000 to $ 400,684,000, or 40 per cent. Carrying the comparison on nine of these roads back two years further, it was found that, in less than four years, their capitals had increased from less than $ 84,000,000 to over $ 208,000,000, or 150 per cent. A portion of this, perhaps 25 per cent of the whole, represents private capital actually paid in and expended; another portion, perhaps equally large, represents dividends the payment of which was foregone and the money applied to construction; the whole of the remainder may be set down as pure, unadulterated "water," which calls for an annual tax-levy of some three or four millions a year.

There is, however, another and very important side to this question. What may be called the wrongs of the community and the exactions of the capitalist have alone been discussed hitherto. It now remains to consider the subject from the capitalist point of view. Almost every balance-sheet presents

* The Commercial and Financial Chronicle of May 15, 1869.

items of loss as well as of profit; — that relating to railroads is no exception to this rule. It has been noticed that the laws which limited the profit on capital paid into railroad construction made no provision to guarantee any profit up to that limit. In regard to this the capitalist took his risk. He built railroads in every direction, and the community undertook to say to him that, where he made a success he must content himself with reasonable profits; — where he made a failure he must submit to a total loss. Here, then, in this absence of a guarantee of reasonable profit, lay the real security which the community saw fit to take for itself against excessive profit. It was a case of resort had to the doctrine of averages. That it was no meaningless security is a thing very susceptible of proof; — indeed, it is not too much to say that the loss incurred by private capital in ill-considered railroad enterprises, — the mere amounts of money actually paid into construction, and since wiped out of existence by insolvency or loss of interest, — it is safe to say that this often forgotten element in the account would constitute more than a set off for the largest amount of watered stock ever alleged to have been issued. People continually refer to the brilliant successes in railroad enterprises; — they do not so often count the failures, or remember the fact that not a few of our thoroughfares were actually given by capitalists to the communities which now enjoy them. This statement is very susceptible of proof. The profits upon railroad enterprises, as a whole, are not excessive, — the business is one which affords in this country even less than the average return upon the capital invested in it. The actual cost in money, up to the present time, of the 55,000 miles of railroad now in operation in the United States cannot have been less than $ 40,000 per mile, or, in all, twenty-two hundred millions of dollars, and was probably much more. Perhaps one quarter in amount of the cost to both sides of the war of the rebellion. The net earnings of the system, — that part which alone represents profit on capital, — cannot certainly be estimated at more than 33 per cent of the gross earnings, or in this case $ 150,000,000 per annum. Here,

then, under the most favorable circumstances, is a system returning 6.82 per cent upon the capital actually invested in it. In America this cannot surely be considered excessive; — had the State governments guaranteed the investments the money could not have been obtained at a lower rate.

An examination of the system in detail would indicate a similar result. In Massachusetts, the net earnings average 7.26 per cent on the construction accounts of the roads; in New York, they average 7.5 per cent; but in Ohio they fall to 4.8 per cent; while in Pennsylvania they rise to 8.3 per cent. Such facts as these would seem to indicate many and very heavy counterbalancing losses. Nor are such difficult to find. Beginning with the Grand Trunk in Maine, and passing down by the Vermont Central to the Boston, Hartford & Erie in Massachusetts, and thence to the Erie in New York, and the Philadelphia & Erie in Pennsylvania, and the Atlantic & Great Western in Ohio, and so on by the Ohio & Mississippi to the North Missouri, it is not difficult to enumerate name after name, representing thousands of miles of roads and hundreds of millions of investment, which are synonymous only with loss and insolvency, or at best with hopes long deferred.

It is in this way that a certain just, though rude average is evolved out of a conflict of shrewdness and simplicity, excessive cunning and unreasoned action. The difficulty with averages is, however, an obvious one. The burden is necessarily to be placed just where the public interest demands that it should not be placed. A thoroughfare like the New York Central makes good the deficiencies of a number of local enterprises which have no connection with it. It is thus on the chief arteries that the greatest obstruction is placed, and the transportation tax is to be levied indefinitely wherever it can most readily be found. The mere fact that a sort of average is educed is no alleviation of particular ills complained of. Each road is constructed on its own merits, and without regard to the profit or loss involved in the operation of another road perhaps hundreds of miles off. That the through routes of the country, — the main arteries of travel and commerce

should ultimately be as nearly as possible free, is of the greatest moment to the whole American people; that they should ever become so under a system which causes them to make good the deficiencies of an entire system, is to the last degree improbable. The true rule would seem to be, that, while the owners have a right to the stipulated return on the cost of their whole property, whether the same was paid in by them in money or in undivided profits within the limit of dividends, yet that beyond this the community ought resolutely to insist that every increase of value should contribute only to the freedom of intercourse.

In conclusion, the practical remedy of the abuse of stock-watering in its most objectionable shape would after all seem to be both obvious and easily to be secured. There has never been in America any recognized and uniform mode of keeping railroad accounts. The want of this has opened the door to all the evils, not fraudulent, which have been described. A very brief statement of the case will make this apparent. All railroad expenditures are incurred either on account of the construction or of the operation of roads. Construction should properly represent cash paid in by stockholders, upon the full amount of which they have a right to receive dividends, if the earnings justify their payment; the operation of the road, on the other hand, is to be fully provided for out of the earnings, and it is only the balance left over after thus providing for it which can be devoted to the payment of dividends. No method of keeping these accounts having been prescribed by government, as a consequence no two corporations have kept them alike. Certain corporations early closed their construction accounts, and consequently the whole cost of developing their roads was afterwards charged to operating expenses. In such cases the community simply doubled and trebled its railroad facilities out of an excessive transportation tax. In other words, instead of paying an annual interest on capital invested in railroads, it pays in the capital itself, thus gradually accumulating a property out of all proportion to the evidences of value which represent it in private hands. This

is what is known as a conservative system of management. On the other hand, another system of management charges all doubtful amounts to construction, thus perhaps running the company in debt, but at the same time reducing operating expenses to a minimum and nominally leaving heavy net profits to furnish dividends to the stockholders. The result of this system is that the securities of a road rapidly reach an amount which more than represents the full value of the property. This is what is not infrequently known as a progressive or enterprising management. In each extreme the public is practically defrauded.

So long as this license in railroad accounts is permitted it is impossible for any community to do more than guess at the real amount of paid-in capital represented by its railroad system. On the one hand the proceeds of the transportation tax are habitually perverted to the work of construction; and, upon the other hand, the private capital which should do the work of construction is applied to the payment of dividends. The responsibility of fixing the cost of their thoroughfares is thus devolved upon the private corporations which own them. That such a power should be abused is almost inevitable; that it now does exist and always has existed is a striking evidence of legislative improvidence. A public and uniform system of railroad accounts, kept in a manner specified by government, and audited by government officials, would have obviated much of the difficulty and prevented innumerable frauds. Finally, a responsible department of the executive should have charge of the subject and should be empowered to decide as to the amounts of private capital, directly or indirectly paid into construction, and authorize the issue of securities accordingly.

## CHAPTER V.

### THE GOVERNMENT AND THE RAILROAD CORPORATIONS.

IF neither competition nor legislation have proved themselves effective agents for the regulation of the railroad system what other and more effective one is there within the reach of the American people? This is the final issue to which the railroad problem must apparently reduce itself. The material and moral difficulties which surround the question are further complicated by grave political considerations, which need now to be stated with all possible emphasis, for they will continually present themselves throughout what remains of this discussion, and must ever be borne in mind. The difficulty in great degree arises from the development of a material and moral power, or rather, perhaps, combination of powers, in our social organism which our political system was not calculated to deal with. At the time the framework of our government was put together, a system of necessary monopolies was the very last thing which was expected to present itself on this continent. Our governments, state and national, grew up among, and were calculated for, a community in the less complex stages of civilization. Our whole machinery looked to dealing with individuals, and that only in the least degree which deserved the name of government at all. The idea of one man or set of men combining to own in absolute monopoly the great channels of internal communication as they then existed, — the Hudson, or the Ohio, or the great lakes, — would have been regarded as a wholly inadmissible supposition, a contingency impossible to occur. Consequently no machinery was devised calculated to meet such an improbable emergency. Yet that very emergency would now seem to be imminent. Here then are two systems growing and expanding side by side, — the representative, republican system of government, adapted to a simple and some-

what undeveloped phase of society; and the corporate industrial system, the result and concomitant of a complex and artificial civilization. How long can they develop together? The peculiarities and combinations now noticed in our legislatures and market-places, the growing torpidity of public opinion, the constant strain under which our machinery of government visibly works, the crude, undigested propositions for reform which emanate from every quarter, the startling rapidity with which change develops itself, and the rapidly shifting phases which all interests assume, clearly indicate some deep-seated social and political revolution in progress. What this will result in, time only can disclose. It would be a mere waste of space and ingenuity to endeavor to forecast it at present.

Meanwhile so far as the railroad system is concerned it seems almost inevitable that the national government must, soon or late, and in a greater or less degree, assume a jurisdiction. This is an obvious conclusion to be deduced from the irresistible development of the system in a course it has hitherto pursued. The next question is when, and in what way, and to what extent, is this to be done? What is to be the basis of legislation? This now admits of almost infinite modification, ranging from public ownership on the one hand, to the most limited regulation on the other. The same may be said as to extent of jurisdiction. It may be assumed over all roads lying in more than one State, or it may be confined to certain trunk lines specially designated as military and post roads. These questions it is now premature to discuss. They constitute the final problem. All other proposed solutions of it, resting upon State regulation or State control, are but temporizing expedients, important simply as illustrating the practical value of certain theories. Such may prove instructive resting-places; they can hardly be the final objective. To these, however, attention should now be confined, for through them the ultimate results are to be evolved.

Two of these proposed solutions have of late excited an unusual degree of discussion. The one seeks to supply our gov-

ernment with a supplementary power, which will better adapt it to the new exigency which it is called upon to meet; — the other directly meets the emergency with a proposal of some form of ownership of railroads by the State; it pronounces the English and American railroad system in many respects a failure, and seeks to make good its defects by the introduction into it of certain features of the Belgian system.

It is impossible, in view of past experience, not to entertain grave doubts as to the result of any experiment of the sort last referred to, made through the political machinery which exists in America. As regards the construction of a railroad system it has repeatedly been tried and uniformly ended in failure. Pennsylvania, Ohio, Michigan, Illinois, and many other States went through the same sad experience. Every section with us had its claims, and those claims could not be disregarded. In Belgium, in France, or in Russia a government engineer can locate a railway, and there an end; it was found to be otherwise in America, and an impartial disregard of the figures of the census by no means resulted in a commercial success. It is, however, argued that it would be otherwise in the case of a completed system; that if our State governments could not construct, they could at least manage railroads by deputy. This remains to be seen. That the government should engage in any business, whether as producers, as carriers, as bankers, or as manufacturers, is opposed to the whole theory of strictly limited governmental functions.

This aspect of the question is most important, and in America it cannot well be dwelt upon too frequently or stated too broadly. Our whole political organization, our history as a nation, the prodigious material development of which we are so vain, — all of these rest upon the great principle of limited governmental functions, and the leaving of persons and interests to rely solely on themselves, and to work out their own destiny in their own way, subject to the least possible external interference. To turn over to a government constructed on such a principle the management of so complex an organization as the railroad system is certainly a measure of the last resort.

But, unfortunately, this is a case in which choice must be made between two evils. So far from disentangling themselves from connection with the railroad system, there is not to-day a government in the United States, including the national government itself, which is not steadily drifting into the most dangerous form of connection with it of which it is possible to conceive. It is scarcely an exaggeration to say that our legislatures are now universally becoming a species of irregular boards of railroad direction. Questions of the purest detail affecting the operation of railroads are regularly brought before them, and the increasing disposition to manage this elaborate system by statute enactment is notorious. Not only is it more than questionable whether this can be successfully done, but the attempt itself irresistibly forces the owners of the system in self-defence into the lobby. The inevitable consequence does not need to be dwelt upon; it has already become a fruitful source of scandal and alarm. The question at issue, therefore, is not between interference and non-interference by the State, but between two forms of interference.

For, indeed, it is practically conceded on all sides that the task of supervising in some way the railroads of a modern State does constitute one of the necessary functions of government. A writer as jealous of limiting those functions as J. S. Mill expressly makes this exception: "There are many cases in which the agency, of whatever nature, by which a service is performed, is certain from the nature of the case, to be virtually single, in which a practical monopoly, with all the power it confers of taxing the community, cannot be prevented from existing . . . it is the part of government either to subject this service to reasonable conditions for the general advantage, or to retain such power over it, that the profits of the monopoly may at least be obtained for the public. This applies to the case of a road, a canal, or a railway. These are always in a great degree practical monopolies; and a government which concedes such monopolies unreservedly to a private company, does much the same thing as if it allowed an individual or an association to levy any tax they chose, for their

own benefit, on all the malt produced in the country, or on all the coffee imported into it." Accepting this statement of the case as sound, and it is difficult to see how it can be controverted, it simply remains to consider what form of interference will be most effective, and at the same time in the least degree politically injurious. At this point opinions diverge.

The results of legislative regulation of private railroad corporations have been sufficiently dwelt upon. It can hardly be claimed that in any aspect they have been encouraging. Not only have the material interests of the community suffered, but the effects upon political morality have been injurious, and are felt at the most vital point of our system, — in the legislative department. A vicious civil service or an inefficient executive can be reformed, but there is no power which can purify a corrupted legislature. Many States in this country, and especially New York, New Jersey, Pennsylvania, and Maryland have now for years notoriously been controlled by their railroad corporations. Not one of these States owns a mile of railroad, and yet it is very difficult to conceive of any form of State ownership which would entail greater scandals or political evils than those which now spring from the system in use in them. The empty name of non-interference is thus jealously guarded, while constant interference notoriously constitutes one half of the legislative business of the country.

The expediency of making an experiment at the State ownership of a railway and its management through the agency of public trustees, instead of a board of private directors, has been more or less discussed during each of the last three sessions of the Massachusetts legislature. A fair though carefully limited trial of the Belgian system was proposed by the Board of Railroad Commissioners of the State in their report for 1871. They advocated the purchase by the Commonwealth of the fifty miles of road between Boston and Fitchburg, which will ultimately connect with the West by means of the Hoosac Tunnel. The argument of the Commissioners practically was, that competition, if it could be secured, was, under the present circumstances, the most effec-

tive agent which could be brought to bear to introduce many greatly needed reforms into the Massachusetts railway system. To effect these reforms by means of legislation in the case of roads owned and managed by private companies, even if it were practicable, would in fact occasion a far more dangerous and corrupting political association between the private companies and the government, than the absolute ownership of any experimental line. Such a line once in the hands of trustees, and energetically managed, would obviate all necessity of further attempts at the most difficult class of railroad legislation by effecting that through the force of competition, which it was now in vain sought to compel by law. The competition and comparison continually existing between the public and private lines could be relied upon to keep the administration of each pure; neither, it was argued, would the State in this way be gradually led on to assume the other railroads within its limits. If public management failed to operate the one road assumed so as to compete with private roads, and in addition thereto to pay the interest on its purchase money, — equal to the dividends on private roads, — then other portions of the State would insist upon the sale of the property rather than pay taxes to support a local public road; did public management succeed in its reforms and still meet all demands on account of interest, then private managements would, under the pressure of public opinion, naturally adopt reforms thus proved to be safe; they would follow in the beaten track.

The only cases furnished by American experience at all parallel to the one here proposed, certainly do not militate against this line of argument. Most prominent is that of the Erie Canal in New York. The influence of this canal as an independent and steady competing force upon railroads is well known; — it, and it only, can be relied upon never to enter either into freight combinations or ruinous competition. It has been public property, and its management certainly has not been above criticism, but it is equally indisputable that it has never exercised upon the politics of New York an influence

either so great or so pernicious as at least two of the private railroad corporations with which it competes. So far as administration is concerned, the precedent of the Erie Canal wholly fails. The service in the case of a canal and a railroad being dissimilar, the element of comparison between the public and the private roads which has produced such great results in Belgium is wanting. One thing, however, is very certain, and not less suggestive as bearing on one present phase of the railroad problem, were the canal a public railway, instead of what it is, Mr. Vanderbilt might safely be permitted to water the stock of the Central to any degree which he might desire; — the community could always control the tariff of his road without being compelled to resort to hostile legislation. Neither would the influence of this competition probably be confined to the Central road. Railroad management in the same community always seeks a certain level; reforms once introduced are never confined to their original limits. Let a positive advance in any direction be thoroughly established, and the pressure of self interest and popular feeling may safely be relied upon to make it general.

The Post-Office Department of the United States government also throws some light through its workings upon the proposed innovation. The postal service is a close monopoly, employing thousands of agents and entailing heavy expenditures; — it has for a long time been subjected to all the evils which flow from a system of rotation in office, — it is a recognized part of the political spoils of the country. While, in spite of these adverse circumstances, its administration will probably compare favorably with that of any railroad in the country, and while it furnishes facilities and accommodates the public as no private corporation possibly could do, yet no one will mantain that the Post-Office in its connection with the government is politically either as disturbing or as corrupting an agent as any one of numerous railroad corporations which are perpetually soliciting Congress.

Should this experiment be tried and succeed it might well give a new phase to the whole question of internal communi-

cation, and bring the railroad problem one step nearer to a solution. Meanwhile, it would be wholly futile to suppose in the face of the growing tendency to nationality, the constantly increasing disposition to ignore State lines and to transfer control to the general government, that this revolution would confine itself to State limits, or that a dozen different State organizations could control a Pacific railway. Such a system, with local jealousies, interests, and pride to contend with, — each great line running the gauntlet of a dozen rival competing points, and artificially turned into twenty interested channels, — would so hamper the commerce of the continent that it would crumble into chaos in less than a twelvemonth. Government ownership of railroads can therefore with us only mean their ultimate, though not necessarily exclusive, ownership by the national government. At present, however, that government is peculiarly unfitted to assume any functions of this sort, and must continue to be so until after a thorough and sweeping reform of the civil service is effected. A purified political atmosphere may be imagined, in which at some future time it would be safe for Congress to assume the management, through supervising boards, of certain designated continental routes; but any movement in that direction would certainly, and very properly, encounter a strong and determined opposition so long as the present condition of affairs exists.

It is not wholly impossible, however, that a safer, even if less effective, solution of the difficulty may be found in the furnishing our governments with the supplementary power which shall adapt them to the new condition of affairs which has arisen. A practical attempt in this direction is now in process of development in Illinois. That State was the first to recognize the essential fact that the railroad system is an exceptional interest, and therefore requires to be exceptionally dealt with. This great stride in advance was secured by the Constitution of 1870. It was the concession of a starting-point, the recognition of the new social and political force for which no provision had been made. When a deficiency is fairly acknowledged, we can in America feel a tolerable confidence that it

will shortly be supplied. The provisions introduced into the Illinois Constitution are, indeed, crude and unsatisfactory, but they are a beginning. A discussion of these provisions will again bring into view at once the very point upon which our State systems have hitherto broken down in their attempts to deal with the railroad development.

The most striking feature of the Illinois Constitution is the strong resolve of its framers to do away with what are known in England as "private bills," and in this country as special legislation. It is unnecessary to dilate upon the nature of this abuse, which may safely be set down as the greatest danger to which any system of government is liable; it may almost be said to be the root of all political ills. Legislation should know nothing of individuals. All modern thought tends to the conclusion that the universe is controlled by general laws; and a belief in special providences is entertained only by the most superstitious. A sound system of government should recognize individuals no more than the laws of nature recognize them. The law should apply to all, without discrimination for or against. The system of special legislation, on the contrary, from top to bottom, is based on a supposed necessity, which is taken for granted as existing, that privileges may be conceded to one or a few which it is not safe or politic to concede to all. Nature never acts in this way, nor will thoroughly enlightened governments do so, when any such exist. The Illinois Constitution deserves to be hailed as a great advance towards the realization of this idea. The framers of this instrument, when they came to dealing with railways, provided for their regulation these articles, among others: —

ARTICLE XI.

CORPORATIONS.

§ 1. "No corporation shall be created by special laws, or its charter extended, changed, or amended; . . . but the General Assembly shall provide, by general laws, for the organization of all corporations hereafter to be created."

§ 11. "No railroad corporation shall consolidate its stock, prop-

erty, or franchises with any other railroad corporation owning a parallel or competing line. . . . ."

§ 12. "Railways heretofore constructed, or that may hereafter be constructed, in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their property thereon, under such regulations as may be prescribed by law. And the General Assembly shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this State."

§ 13. "No railroad corporation shall issue any stock or bonds, except for money, labor, or property, actually received and applied to the purposes for which such corporation was created; and all stock dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. . . . ."

§ 15. "The General Assembly shall pass laws to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises."

Now while it is conceded that special legislation is the bane of all government, it must also be conceded that special legislation has hitherto been found indispensable to any regulation of the railroad system. The exception once conceded, every railroad came up and demanded it own special immunities and privileges, — its peculiar charter, which was a law unto itself. The extent to which this was carried may be inferred from the three thousand two hundred acts on the statute-book of Great Britain, and the one thousand on that of Massachusetts, — nine-tenths of them, in each case, special legislation to meet the supposed requirements of an organized monopoly. The exception and its dangerous nature — the frauds which were perpetrated under it, and the lax and confused system of legislation it was engendering — long ago attracted the public attention and excited its alarm. The press raised its voice, and the people responded by inserting into more than one constitution provisions absolutely inhibiting the passage of any act of a private nature. In other States the Executive accepted the issue; and in New York a long

succession of vetoes has only recently vindicated the principle of general legislation. There was in each of these efforts at reform an element of fatal weakness. The fact that the railroad system occupied an exceptional position was ignored. Instead of conceding that this system was made up of a number of monopolies, in regard to the necessities of which a discretion must be exercised, journalists and legislators insisted on placing them in a position exactly similar to that of individuals, amenable to every law of trade. The result was, of course, failure. The monopolies evaded or broke down the law, and were omnipresent in legislatures. There was no machinery in the government adapted to meeting the exceptional case. Reformers failed to realize that, though special legislation was corrupting the whole political system, yet general legislation of the ordinary description would not meet the requirements of the case. It is here that the whole question lies in a nutshell, — how can the requirements of the railroad system be met, and yet its individual members driven from the legislature?

This final result was not attained in the Illinois Constitution; had it been, the value of that instrument would have been more than doubled. Indeed, the provision made in it brings the innovator just to the fatal point; as yet he has done nothing, but the next step involves everything. In spite of its Constitution, Illinois must now slip back into the deep mire of special railroad legislation, or it must go on and solve the problem. The case stands thus: the Constitution implies the passage of (1) laws prescribing reasonable rates of charges on the different railroads, and (2) laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariff.

The legislature it seems is to do this work; if so, the work cannot be done; the provision is so much waste paper. It may boldly be laid down as a principle, that no general law can be framed which will meet the exigencies of a whole railroad system in all its manifold details. This is true in almost every respect. A law, for instance, authorizes the taking of

land for railroad purposes, but one road requires an exceptional amount of land in a particular locality. A general law regulates station facilities; but while it may apply well to one district, it will be simply ridiculous in its application to another. The difficulties in the way of framing a general law regulating fairs and freights, — the very one provided for in the Illinois Constitution, have already been sufficiently discussed. If, turning from this manifest difficulty, the legislature seeks to establish tariffs adapted to particular roads, then the whole evil of special legislation in its worst possible form is upon it. Where, then, is the escape?

We have thus got back to the old puzzle, — how to meet special requirements under general laws. The solution, if found at all, — if failure is not predestined, — will be found by the Illinois legislature in fairly recognizing an evident exception to general conditions, and supplying an executory power specially calculated to meet it. It is the want of this which has brought to nought all efforts at general legislation on this subject up to this time. They have uniformly failed from one defect; they were hard, unyielding, intended to apply to differently conditioned members of one exceptional and most complex system, and yet wholly unprovided with any discretionary, adaptive, or executory power. The law was there, but it did not move. It was as if a criminal law were put upon the statute-book which was to apply to all degrees of crime indiscriminately, without the aid of judge or of officer. And, indeed, this very example illustrates the whole subject. The criminal law was once a subject of special legislation. Individual criminals had acts passed to meet their particular cases. The legislature was at one and the same time judge and jury. The legislative and judicial functions of government were, however, separated so long ago, that the community has forgotten that they were ever united; yet it was this division, first introduced under Alfred the Great, which alone made possible the success of parliamentary government. Had it been the discovery of one man, he who made it would have deserved to rank among the greatest

benefactors of his kind. In early New England history the distinction was again obliterated. The Great and General Court was in Massachusetts Bay both the source of law and the seat of supreme justice. This simplicity very shortly dis appeared as society became more complex, but it left behind it the fatal legacy of special legislation. The same confusion of functions is exactly what has hitherto existed in regard to railroads; the result, both in New and Old England, is seen in a statute-book swollen with special enactments, a legislature overwhelmed with business it cannot do and tainted with jobbery of which it cannot rid itself, all resulting in a railroad system which is a confessed failure in everything but its material aspect, with which the legislature could have nothing to do. Can the desired separation be effected?

The solution of the problem stated in this form seems so obvious, that it is fairly matter of surprise that it has never yet been practically attempted. The legislature should enact its general laws for the requirements of railroads, as it does to meet the innumerable civil and criminal complications which arise; but, in the one case as in the other, the judicial and discretionary action under the general law should be devolved upon tribunals specially created to take cognizance of them. The legislature declares the rule which is the same to all; but the degrees of discretion which varying circumstances exact in the application of the rule must constitute a trust necessarily delegated to others. At present all these distinct powers are jealously retained by the legislatures. Their committees sit as courts and take evidence and listen to arguments. So far it is well. At this point, however, instead of framing a general law or dismissing the individual case, they undertake to give a charter to this applicant and to refuse it to that; to pass a special act in favor of this corporation, and to reject it as regards that; to authorize an increase of stock here, and to direct the construction of a new depot there. These are functions which no legislative body can successfully perform; as well undertake to decide every suit at law or to affix the penalty to every crime. Just so long as legislatures insist on

themselves doing work of this nature, just so long will corruption increase and the statute-book fall into confusion.

But it will be said, Who will guard the virtue of the tribunal? Why should the corporations not deal with them as with the legislatures? They may do so, but somewhere and at some point, put on all the checks and balances that human ingenuity can devise, we must come back and rely on human honesty at last. One rule always holds good, — where the most direct responsibility exists, there will the best conduct be found. Corruption loves a throng and shrinks from isolated places. To divide responsibility is to destroy it. The judges of our courts are rarely otherwise than pure; the heads of our official departments are conspicuous for honesty; they are always directly and individually responsible. If we thus can, and indeed, from the necessity of the case, must confide the charge of the public funds and our personal liberties to mortals like ourselves, acting under the law, it is difficult to see why, except that we never have done so, we cannot trust these other interests to similar mortals. All in such cases depends upon the men. We have had in England and in this country a sufficiency of feeble attempts in this direction — boards of trade, railroad commissions, and various other pieces of machinery. They have all failed, for one reason, — the principle of special legislation was ever kept open in the background behind them. They have uniformly possessed a mere simulacrum of power; their decisions were appealed from, their recommendations were ignored, and their principal duty was to sit patiently by and watch the corporations as they dealt directly with the legislature over their heads. Instead of the legislature saying to the sturdy corporation beggars who infested the lobby, as it would say to civil litigants or to criminals, "Leave us! there is the general law and there is a tribunal specially charged with the interests of you monopolists; go to it!" — instead of this, the boards, commissions, and what not, have ever been placed in the ignominious position of a court, whether civil or criminal, from which in every case an appeal would lie to the legislature it-

self. A tribunal so constituted can hardly fail, soon or late, to sink into contempt; least of all is it calculated to deal with powerful corporations. As a direct consequence of this conspicuous distrust, these tribunals have almost invariably been made up of very inferior and, not seldom, corrupt men, for no such responsibility and prominence was thrown upon them as forced out capacity and integrity as the only alternative to failure. Had the same class of appointees, as a rule, been placed upon the bench, the judiciary would long since have sunk into contempt. The duties, the responsibilities, and the characters of those composing these boards should, on the contrary, be brought up to the highest standard, — to an equality, in short, with those of the judges of our courts. Their tribunals should be clothed with all necessary powers and be put forward as if the members were fully competent to represent the interests of the State with an experience and ability, a knowledge of details, and a zeal in their occupation equal to that ever so conspicuously displayed by the agents of the corporations. Such men could certainly be found; the corporations always have them. Meanwhile the whole subject may be summed up in few words: under a system which permits special legislation, boards for the regulation of railroads are useless; they are, however, indispensable under one which confines itself to general laws.

It is not impossible that the defective machinery in our government, to use once more the simile originally employed at the beginning of this chapter, may be strengthened in the way indicated. A new strain has been brought to bear. At present our government occupies the impossible position of a wooden liner exposed to the fire of modern artillery. It was built for no such trial. The railroad corporations, necessarily monopolists, constitute a privileged class living under a form of government intended to inhibit all class legislation. We must, then, see our government fail in this unexpected crisis, or we must strengthen it in such a manner as to enable it to vindicate its authority. This can only be done through human agency; ingenious statute machinery, without a man

inside of it, will only result in certain failure. The other course, also, may fail, as the iron plates of our monitors may be crushed by the weight of novel projectiles; but here, at least, the power of resistance can in some degree be proportioned to the intensity of the strain.

The only advance which has for years been made in railroad legislation was effected in the direction indicated by the legislature of Illinois in the first session after the adoption of the new constitution. Amid some legislation of very questionable character and propriety, and which can hardly fail injuriously to react upon the reform desired, two laws were enacted of great importance; — by one a board of commissioners was constituted, and by the other a general attempt was made to classify roads and to affix limits to the charges for travel. It is extremely improbable that the last act will be found perfect in its provisions, but it contains in itself the two great germs from which an efficient regulation of roads by law must grow if the thing is in any way possible; — these two germs are the recognition of the natural differences between different railroad enterprises, and the consequent delegation of a discretion in details and administration to a permanent and competent tribunal.

THE END.

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